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Identification and Interpretive Rights in the Rhetoric of Violent Spectacle

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Identification and Interpretive Rights in the Rhetoric of Violent Spectacle

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Identification and Interpretive Rights in the Rhetoric of Violent Spectacle

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"Identification and Interpretive Rights in the Rhetoric of Violent Spectacle" approaches lynching, the death penalty, and stealth torture as multimodal public discourse, comprised of violent events, their representations, and their surrounding debate. While the forms of violence I discuss all have avowed communicative purposes, I argue that the rhetorical emphasis on these messages often masks more important claims about group identity and the nature of punishment. Through examination of the physical and discursive constructions of these violent events, I argue that these spectacles serve as centers of identification through which rhetors reinforce divisions between groups and standards of violent and non-violent argument. Chapter One builds on the common claim that lynching was a performance that affirmed a version of white Southern identity by examining how pro-lynching rhetoric performed lynching's implicit refusal to deliberate. Chapter Two addresses the contemporary death penalty's shift away from live spectacle and examines how pro-death penalty rhetoric constructs the audience/execution relationship when visual access is not an option. Chapter Three discusses how rhetors circumscribe "the right to look" at illicit images of Saddam Hussein's execution and the torture at Abu Ghraib, illustrating how the "right" reaction to a violent image can be a marker of group membership. The Conclusion begins to expand the dissertation's

argument by raising questions about understandings of justice, legal codifications of pain, and multimodal representations of violent events.

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~Introduction~
Examining Violence as Rhetoric

In 2008, humor website *The Onion* released a video entitled "Supreme Court Rules Death Penalty is 'Totally Badass.'" *The Onion*'s articles and videos mimic the style of newspapers and cable news networks, but consist either of satirical commentary on current events or broader, more absurd humor. In "'Totally Badass,'" a correspondent reports on the Court's fictional decision, recounting the Justices' behavior in the courtroom to explain their motives. The correspondent explains that "the Court reaffirmed the legality of the death penalty on the grounds that it is 'totally badass'" after watching a video of a lethal injection "that showed the condemned writhing in pain before dying." The correspondent quotes Chief Justice John Roberts, who explains the court's decision on the matter: "While evidence presented to the court indicates a degree of fallibility in the procedural methods of capital punishment, it is the opinion of this court that the practice remains hella fuckin' balls-to-the-wall awesome" ("Supreme Court Rules"). The Justices favorably compare existing methods to popular culture representations of "justice," including the film *Judge Dredd.* The correspondent goes on to say that, along with its written decision, the Court submitted drawings of what they referred to as "more badass punishments" ("Supreme Court Rules"). The video shows what look like children's drawings of a man being pushed into a pit of alligators and a man about to be beheaded by a knight.

This video's humor stems in part from the contrast between the Justices' responses and their public personas. It seems unlikely, for example, that Justice Ruth Bader Ginsburg would say "That's wicked" in response to anything, particularly in a

professional setting ("Supreme Court Rules"). But it is also significant that the Justices are discussing the death penalty rather than a nonviolent practice. The video's audience is supposed to know that unbridled enthusiasm is an inappropriate reaction to seeing an execution. Death penalty decision-making is supposed to be a somber, detached process, so the Justices' conduct is hyperbolically wrong. However, while their reactions are out of place in this context, this sort of pro-violence sentiment, even in relation to the death penalty, would be familiar to many Americans. Calls for detachment and objectivity are common in death penalty rhetoric, but appeals to emotion, especially the desire for revenge, still appear frequently. The "wrong" attitude is a disavowed but always present part of capital punishment. The video is funny because the Justices have suddenly ejected standards of decorum and embraced a extreme version of an underlying attitude.

The video suggests, then, that the death penalty works in part because of shared understandings of appropriate audience reaction. The death penalty is not the only form of organized public violence that works this way. As Hariman and Lucaites explain, public life is supposed to be divorced from emotion. They write, "When public life appears emotional, it is assumed to be imperiled: either the political official is exhibiting a loss of the self-control essential for responsible administration of the state, or the public audience is succumbing to those irrational impulses that can lead to . . . the breakdown of social order" (137). This standard of detachment is especially important for decisions about public violence because of the need to distinguish "appropriate" violence, like the death penalty or drone strikes, from "inappropriate" violence, like extralegal lynching or terrorist attacks. I use "appropriate" and "inappropriate" to describe these types of violence because, as this dissertation will show, which violence is considered appropriate

is determined less by moral and ethical questions than by standards of decorum. Of course, appropriate violence is defined in part by its publicness. Violence sanctioned by the state, the country, or just the "best citizens" gains legitimacy through appeals to consensus and authority. But appropriate violence, like the idealized version of public speech, also has to meet the standards of public forums. Inappropriate violence is personal, emotional, excessive or unnecessary, and sometimes fun. For example, a lack of fun is part of what is supposed to distinguish contemporary execution from the jovial legal and extralegal public hangings of the past. Appropriate violence, on the other hand, is impersonal, unemotional, necessary, and somber or unpleasant. In adhering to these standards, organized public violence makes an argument for itself, distinguishing itself from its unsavory counterparts.

Organized public violence does not just argue for its own existence, however. The Supreme Court video's absurdity also comes from its skewed priorities for the "message" that execution sends. The Justices in the video want execution to be both entertaining and awe-inspiringly gory. The resulting executions would seem designed to produce both fear and admiration for the communities that authorize them. According to its proponents, the real death penalty sends different messages: that specific kinds of crimes will not be tolerated, and that victims can move on to the next phase of their lives. Within pro-death penalty rhetoric, the death penalty is important less for its effect on the condemned than for its effects on the larger population. A necessary and positive suasory purpose is part of what distinguishes the forms of violence discussed in this dissertation from unacceptable forms. The fact that these texts are supposed to send messages also structures understandings of how audience members should relate to the violence.

While the rhetoric around these forms of violence makes it clear that audience members should have some relationship to the violence, the appropriate responses vary and are circumscribed by understandings of appropriate violence and appropriate ways of looking at violence.

In this dissertation, I will look at the rhetoric of and around three different forms of public violence: Southern spectacle lynching, contemporary state-sponsored execution, and stealth or "clean" torture. While different in important ways, these violent practices have significant overlap in their rhetorical constructions. First of all, all three practices are constructed as suasory—that is, their proponents claim that the violence is meant to "send a message," typically to an outgroup comprised of racial "others." These practices are not all *visible*, but they are all *public* in that they are constructed as acts by and for different communities: the South, a specific town, city, or state, and/or the nation. The authorizing communities, also the audiences for many of the violence's messages, may not directly witness the violence, but come into contact with it through surrounding debates and various visual and written representations. While this publicness can cause problems for supporters of violence, these practices draw their legitimacy in part from explicit or implicit public authorization. Finally, all three practices were or are treated as legal or semi-legal within the United States and are framed as necessary for "justice" or public safety. This construction separates these practices from unacceptable violence and, as such, makes implicit claims about the nature of punishment.

While physical violence is not a traditional subject of rhetorical inquiry, these practices and their surrounding rhetoric raise questions for rhetoricians. The physical and rhetorical structure of the violent event complicates the division between speaker and

audience. As I will discuss, the communal construction of these events interpellates people into participation while also masking their responsibility, raising questions about complicity and how rhetoric facilitates violence. The pro-violence arguments discussed in this dissertation also often seem strange or contradictory, largely because of the maneuvering required to encourage violence while still constructing the violence as "appropriate." Typically constructed as a "last resort" when non-violent persuasion fails, appropriate violence always requires some sort of justification, however flimsy. The rhetoric that encourages violence, however, often comes into conflict with the frames that distinguish "civilized" from "uncivilized" violence, so each of these violent practices has avowed and disavowed meanings, both of which are required to keep them functional. As a result, these violent events sometimes seem to be designed to do something other than what they are allegedly supposed to do, and pro-violence rhetoric often sends seemingly mixed messages about the violence's goals. Looking at the rhetoric of and around these practices should help anti-violence scholars and activists understand the complicated internal logic that animates these forms of violence and allows them to maintain widespread acceptability.

The remainder of this introduction will establish some of the dissertation's central premises, bringing into dialogue concepts from several disciplines to construct a clearer understanding of violent spectacle as public discourse. This interdisciplinary approach fills a gap in the conversation about rhetoric and violence, as well as conversations about public and visual rhetoric. As I will discuss, it is common for scholars within and outside of rhetoric to discuss lynching, the death penalty, and stealth torture as rhetorical, even when they do not use rhetorical terms. But while rhetoricians have written a great deal

about the relationship of rhetoric and violence, how violence functions *as* rhetoric merits more examination, particularly for what it can tell us about identification and public culture. Ultimately, I will argue that these practices of organized, public violence and their surrounding conversations serve as sites of identification, and this function, tied to standards for "appropriate" violence, helps to explain both the violence's persistence and the often-contradictory arguments used to defend it. These violent spectacles and their supporting rhetoric construct a spectator/citizen, as well as an "other" to which the spectator/citizen is opposed, and considering those frames makes visible the groups that benefit from that construction. This work is thus essential not just for scholars interested in violence and visual rhetoric, but also scholars and activists interested in social justice more broadly.

I will first discuss existing scholarship on rhetoric and violence and the reasons for approaching this violence as rhetorical. I will then address questions of sympathy and third party relationships, both because this issue has long structured scholarly approaches to violence and because this dissertation will deal with how these third party relationships are framed in the violence itself and the rhetoric around it. The final major section of this introduction discusses my approach to violence as spectacle, including the complexities of addressing spectator relationships to violence that is largely obscured.

Violence as Rhetoric

While this dissertation is focused on specific forms of organized public violence, it is impossible to talk about that violence solely as a physical phenomenon. In looking at how the violence is constructed as a rhetorical act, physically and through its surrounding

rhetoric, this dissertation touches on several forms of violence. I will first clarify what I mean by "violence" in the context of this dissertation, then discuss the reasoning behind and goals for looking at these forms of violence as public discourse.

I describe this violence primarily as "organized" and "public," rather than as "state violence," for several reasons, and with some reservation. Southern spectacle lynching, the death penalty, and torture are all forms of state violence. While lynching occurred outside of the normal confines of judicial process, police and government officials made few pretenses to stop it, and it functioned as a means of social control alongside Jim Crow legislation and other discriminatory policies. Torture is more obviously an act of the state, even though, as I will discuss in Chapter 3, it is constructed to obscure that fact. There is a danger in not highlighting that all of this violence is state-sanctioned, especially given that lynching and torture apologias often deny that the practices are systemic. Within this dissertation, however, I want to emphasize aspects of these violent practices that the term "state violence" can obscure. First, the term "state" as it is used to discuss violence often refers to various levels of government without clear distinction. While "public" is no more determinate, its indeterminacy is clearer, leaving room to articulate which groups are authorizing and/or are constituted through particular acts of violence. The violent practices discussed in this dissertation take place across different geographic scales and are often connected to deeply local motivations, so making those distinctions is necessary. In the case of lynching and, to a lesser degree, the death penalty, the violence functions partially as a means of opposing a meddling and ideologically disconnected federal government. Additionally, the word "public" emphasizes the dialogic nature of this violence, anchoring these practices in their authorizing

communities rather than constructing them as solely top-down endeavors. These rhetorical acts of violence and their supporting rhetoric persuade many community members to assent or acquiesce to violent social policy. While these rhetorics are irresponsible and manipulative, it is important not to downplay their reinforcement of existing community values and the various forms of complicity that allow these practices to continue. Describing the violence as "organized" is also meant to highlight this (at least apparent) consensus and distinguish these forms of violence from forms that are more highly improvised and spontaneous.

This dissertation is also concerned with how rhetors delineate the borders of "appropriate" violence, and how violence is constructed to meet those standards. Even within the realm of "authorized" violence, organized by a state or community, there are norms that distinguish appropriate or "civilized" violence from inappropriate or "uncivilized" violence. Any organized public violence that deviates from this standard requires additional explanation and may eventually be eliminated. All of the violent practices discussed in this dissertation respond to existing standards for "appropriate" violence. Lynching mimics and transforms public execution, creating a deliberate excess to illustrate that white Southerners are the true source of the law; the contemporary death penalty avoids the excesses of lynching by seeming sterile and painless; and stealth torture avoids the legible barbarousness of scarring torture by hiding any evidence of bodily harm. This dissertation examines these rhetorical choices, asking, how do these particular forms of violence designate themselves as appropriate, and what assumptions about violence and decorum are implicit in those designations? What understandings of pain, punishment, and justice must audiences accept in order to view these practices as

necessary and proportional? The standards for appropriate violence are historically determined and shift to accommodate changes in public perception, but the standards that structure these practices are surprisingly similar. Examining them together clarifies the historical trajectory of appropriate violence, but it also illustrates the ways in which the same standard can be transformed (or transcended) in the rhetoric of and around these violent practices. By looking at both the standard narratives of these practices and how rhetors address occasional "botched" incidents, this dissertation addresses how pro-violence rhetoric keeps key forms of violence acceptable, in spite of sometimes obvious deviations from appropriate practices.

The forms of violence discussed in this dissertation are perhaps closest to what Slavoj Žižek describes as objective violence, although they also register, at various times and to various audiences, as subjective violence. Whereas subjective violence is legible "as a perturbation of the 'normal,' peaceful state of things," objective violence is harder to recognize because it operates in the background of everyday life (Žižek 2). Objective violence can be systemic or symbolic, but in both cases, it is the default, a "normal" violence against which "abnormal" violence is defined (2). In some ways, lynching, the death penalty, and torture fit these criteria because they all are all "normal" in their respective historical moments. They are also, however, visible, controversial, and constructed as special or anomalous in various ways. The death penalty, for example, is subject to restrictions that other punishments are not. States are required to give capital defendants a bifurcated trial and, if the defendant is sentenced to death, an automatic direct appeal. The understanding that "death is different" marks the death penalty, separating it from other punishments that are thought to require less consideration. All of

these violent practices, while routine, require special justifications for American audiences in a way that the systemic violence of capitalism does not. These practices balance violence and non-violence, and are in some cases both highly visible, through the discourse that surrounds them and occasional visual texts, and highly obscure, in that few are allowed physical or visual access to the proceedings and the surrounding rhetoric downplays their significance.

In sum, when I say "violence," I mean physical violence, in which one human or group of humans harms the body/bodies of another human or group of humans, but my analysis does not end there. In addressing the rhetoric that supports this physical violence, I also examine what Johan Galtung calls "cultural violence." Galtung describes cultural violence as "those aspects of culture . . . that can be used to justify or legitimize direct [physical] or structural [systemic/objective] violence" (291). Violence as rhetoric denies outgroups basic physical safety and control, but its repetition and justification also build a normative foundation of cultural violence through the understanding that violence is an appropriate way to communicate with certain people. These violent practices and their surrounding rhetoric are characterized by multiple forms of epistemic injustice: denial of interpretive rights, of argumentative capacity, and of the opportunity to deliberate. These denials operate through established norms for public interaction that might otherwise seem innocuous, as well as more obviously prejudiced beliefs. Because the authorizing populations have only intermittent visual access to these violent practices, the culturally violent rhetoric that structures understanding of the physical violence could be many people's main point of contact with violence, and thus merits close examination. This cultural violence can also impact interactions that are not directly connected to the

violent practice that they support, so these pro-violence norms may appear in unexpected and potentially troubling places.

In approaching physical violence as rhetorical, my work differs somewhat from existing work on rhetoric and violence. Scholarship on rhetoric and violence typically centers on one of two questions: can rhetoric be violent, and how does rhetoric facilitate violence? These inquiries thus deal with either rhetorical force and the borders of persuasion and coercion, or with the deliberative or manipulative processes that lead groups to assent or acquiesce to violent policies. Both areas of inquiry complicate the long-standing construction of rhetoric as the "other" of violence, and in that aspect, they intersect with this project. The distinction between rhetoric and violence has never been straightforward. Megan Foley notes that rhetoric's "force" has long been a source of anxiety for rhetoricians. She explains that Aristotle

> indicates that the relation between coercion and persuasion presents an undecidable aporia. On the one hand, he writes, persuasion stands opposed to coercion. Yet, on the other hand, he says that those acting under persuasion resemble those acting under coercion. Coercion and persuasion appear simultaneously similar and antithetical. (192)

She suggests that modern rhetoricians have shied away from the question of rhetoric's force because of the anxieties associated with confronting these slippery borders and the ethical questions they can raise. Violence as rhetoric complicates the conversation further because it often affirms the ideal of rhetoric as violence's "other." Rhetorical acts of violence, along with their supporting rhetoric, label certain populations as unreceptive to nonviolent persuasion. Rhetoric's violence is thus projected onto the victim, and the

perpetrators can maintain their status as superior because of their ability to deliberate. Rhetorical acts of violence are often constructed not as a corruption of rhetoric's ideals, but as an example of them.

Because the violence under discussion is public and thus requires some sort of consensus, if only apparent, this project also intersects with scholarship that examines how rhetoric facilitates violence. Discussing the acts of violence themselves as rhetorical complicates this conversation as well because the physical construction of the violence is a part of the facilitation. In addition to the rhetorical patterns of deflection and dehumanization that one would expect in rhetoric that facilitates violence, the violence itself is designed to optimize audience reaction. As I will discuss in Chapter 1, lynching drew on existing rituals of public execution to facilitate the audience's comfort and legitimize the proceedings. Much of this dissertation will focus on how the physical and discursive constructions of these acts of violence work together to minimize dissent.

Approaching these violent practices as rhetorical makes sense in large part because we already talk about them that way, both in scholarship and in public life. In discussing the expressive or cultural functions of punishment or torture, scholarship on violence often constructs these practices as communicative. The procedures associated with these violent practices make it clear that the utilitarian functions of crime prevention or information gathering are not a priority. As I will discuss in Chapter 1, lynchers were clearly unconcerned with lynching the right perpetrator (assuming a crime had been committed at all), and both contemporary execution and stealth torture are ill suited to their respective purposes. Instead, these rituals, as Paul W. Kahn indicates about torture, are ways "of creating and sustaining political meaning" (13). While the death penalty

may be expensive and ineffective at deterring crime, its connection to a retributive worldview and a "tough on crime" political ethos makes it a useful rhetorical tool for reinforcing specific community values (*Peculiar Institution* 234). Lynching, as I will discuss in Chapter 1, functioned in much the same way, reinforcing an idea of Southernness during a time when Southern identity was increasingly unstable (Wood 4-8). These works make it clear that these forms of violence sent messages about and to the communities that authorized them, and that purported utilitarian functions were, at most, secondary to these communicative and cultural purposes.

Vernacular discussions of violence have a similar, if sometimes uncritical, focus on violence's assumed communicative functions. As Michele Emantian and David Delaney explain, "sending a message" is a common metaphor in pro-war rhetoric. They identify "several hundred" uses of the metaphor in the rhetoric leading up to the 2003 invasion of Iraq; for example, "A U.S. triumph in Iraq would send a dramatic message. If we can defeat a terrorist regime in Iraq, it would be a defeat for terrorists globally" (qtd. in 298). They also note that the metaphor was prominent in Vietnam-era descriptions of "bombing 'campaigns'" (299). More recent examples also abound. Proponents of missile strikes against Syria in the wake of Bashar al-Assad's alleged use of chemical weapons framed the strikes as largely communicative. Secretary of State John Kerry argued, "[W]e know Assad will read our silence as a signal that he can use his [chemical] weapons with impunity. And in creating impunity, we will be creating opportunity—the opportunity for other dictators and terrorists to pursue their own weapons of mass destruction, including nuclear weapons" (Peralta). According to Kerry, military action would persuade Assad to stop using chemical weapons and deter others (implicitly, Iran) from similar or escalated

violence. The plan had no pretense of deposing Assad; like many other military actions, it was only supposed to "send a message" ("Rice: Strike Against Syria").

Speakers distinguish this kind of rhetorical violence from terrorism, the unacceptable form of rhetorical violence, through claims about moral necessity and appeals to fear. Typically, "sending a message" with violence responds to the target's use of or perceived propensity for "inappropriate" violence. Kerry's claim that Assad's use of chemical weapons constituted "moral obscenity," for example, constructs chemical weapons as offensive and appeals to a desire to balance the moral scales through retribution (Richter). His assurance that other would-be threats would take any lapse in vigilance as an excuse to use nuclear weapons is a clear appeal to fear. There are many other lapses in US vigilance, and haphazard reinforcement of international law or moral standards is not much more likely to be effective than are periodic terrorist attacks. But the use of chemical weapons, like the use of nuclear weapons, is outside of the standards of appropriate violence and thus requires violent retaliation or, if possible, preemptive action. The use of chemical weapons marks Assad as unreasonable, and Kerry's argument suggests that violence is the only way to protect Syrians and, ultimately, the United States.

The violence discussed in this dissertation relies on similar justifications for targeting their respective threats: the "black brute" rapist, the inhuman murderer, and the maniacal terrorist. These targets are similarly marked by the use of inappropriate violence and similarly constructed as immune to reason. The construction of the mindless, unreasonable perpetrator means that these rhetorical acts of violence do not actually need to prevent future violence to appear justified. Because they rely on established

understandings of who is a threat and how best to respond to threats, these violent practices can seem reasonable even when they are ineffective. If torture does not prevent terrorist attacks, the rhetoric of the unreasonable perpetrator suggests that it is because terrorists are hell-bent on attacking and detainees are too devoted to the cause to even register pain. As I will discuss, pro-violence rhetoric often constructs these practices as the least we can do, rather than the outer limit of justifiable action.

Looking at these forms of violence as rhetoric, then, allows us to address them on their own terms. These terms are not always straightforward. As I noted above, the messages that an act of violence is *supposed* to send does not always match the violence's sanctioned procedures or live performance. By examining both the acts of violence themselves and the rhetoric that supports them, we can identify the various messages violence is supposed to send, to whom, and how that message can transform along the way. Importantly, addressing this violence as a form of public discourse also resists the impulse to push violence into its own category, to insist that this kind of physical violence must not be a means of communication. Addressing how rhetoric and violence are intertwined in these instances can help us understand how violence maintains acceptability and how we might conceive of a public space that functions without it.

Sympathy and Spectatorship

This dissertation is focused on violence that is or is made to seem distant from the audience and how the event itself and the rhetoric around it structure audience engagement. Embedded in this project is the question of what makes people sympathize

or identify with victims of violence. While examining violence as rhetoric is somewhat unusual, thinking about how and whether people sympathize with the victims of violence is not. Thinking about sympathy involves engagement with two interrelated questions: what makes pain visible, and what makes humanity visible? For someone to recognize another's pain, they have to both see that suffering and recognize the person experiencing it as a person. As many scholars have noted, this recognition process is much more complicated than it sounds.

Much of this difficulty comes from the dominant pain-related paradigm that Elaine Scarry describes in *The Body in Pain.* Scarry argues that, because pain is an internal state with no object outside the body, it is nearly impossible for other people to accurately perceive someone's pain. This conception of pain enables certain kinds of inquiries—for example, doctors will look for the source of pain in a patient's body—but its adoption erects obstacles to the sympathetic gaze. Scarry famously argues that skepticism is the default response to another's suffering. She states, "'[H]aving pain' . . . is to 'have certainty,' while for the other person it is so elusive that 'hearing about pain' may exist as the primary model for what it is 'to have doubt'" (4). For Scarry, this communication barrier inhibits the use of other people's pain to argue for political change. Pain is so radically solipsistic that it is apolitical, and that is a key source of its power.

Timothy Kaufman-Osborn notes that Scarry's conception of pain is not the only possible understanding, but that its dominance severely limits arguments about suffering. If pain is a physical state, then outsiders attempting to ascertain whether there is pain have to look for "evidence" in the form of visual signifiers. If there is a visible wound, then an audience can attempt to make judgments about the pain's severity. These visual

signifiers are far from straightforward, however. Kaufman-Osborn uses the 1999 execution by electrocution of Allen Lee Davis as an example. Davis' execution was controversial because witnesses reported muffled shouting and blood pouring from Davis' mouth. His execution was a key part of *Provenzano v. Moore* (1999), in which attorneys for death row inmate Thomas Provenzano argued that his sentence should be commuted on the basis that Florida's death penalty was unconstitutionally cruel. Images, released to the public as a part of the Court's opinion in *Provenzano v. Moore,* showed that the 350-pound Davis was barely constrained by the straps on the electric chair and had bled onto his shirt, although the source of the blood was not clear. Observers could agree that the bleeding was unusual, but there was not consensus on whether the blood indicated pain beyond what is to be expected during an execution (145). While Provenzano's attorney presented these visual signifiers as self-evident, the majority of the Florida Supreme Court disagreed, and "Old Sparky," as Florida's electric chair was affectionately nicknamed, remained in use (153).

In addition to these ambiguities, which could apply to violence seen in person or after the fact, images of suffering have to meet particular visual standards to resonate with the audience without repulsing them or aestheticizing the victim's pain. Hariman and Lucaites note that images "must be structured by familiar patterns of artistic design" to resonate with a broader public (29). The image's value as a rhetorical text comes from its immediacy, and familiar composition allows readers to process an image more quickly. But an overly accessible image can also be problematic. In her discussion of *Without Sanctuary*, a book and traveling exhibit of lynching photographs, Wendy Wolters expresses concerns about whether audiences will uncritically adopt the

perspective of a lynching audience and reproduce the trauma and inequality of the original spectacle. The photographs' arrangement puts viewers in the space of the lyncher or the photographer, adopting a white right to look that exhibits must address in some way (399-400). There are also concerns about the obligations (or lack thereof) that an aesthetic object produces. Susan Sontag notes that "[i]t seems exploitative to look at harrowing photographs of other people's pain in an art gallery," perhaps because the museum setting does not seem to encourage engagement with the conditions that produced the suffering (*Regarding the Pain* 90). Sontag also notes, however, that other viewing situations may be no better. Because the viewer's contact with the image is always temporary, although she also notes that, even outside, "there is no way to guarantee reverential conditions in which to look at these pictures and be fully responsive to them" (90). Many audiences are likely to encounter the suffering of others mostly through images, and the limits associated with this sort of engagement can inhibit their connection with victims.

Even if viewers can register suffering in an image or in person, the victim's perceived identity affects whether viewers will care about the pain they see. As Judith Butler notes, responses to suffering are based on a "field of perceptible reality . . . in which the notion of the recognizable human is formed and maintained over and against what cannot be named as the human" (64). The external frames exist prior to and are reinforced by violent spectacle. To care about someone's suffering, a viewer needs to 1) recognize the victim as a human 2) who experiences pain in the same way that the viewer experiences it, 3) does not deserve to be in pain, and 4) whose pain is unnecessary. The forms of violence discussed in this dissertation are particularly unlikely to encourage

sympathy because they reinforce existing divisions between ingroups and outgroups. The victims of violence are othered both before and because they are targets of public violence, and that persistent othering makes it more challenging for viewers to perceive victims as worthy of sympathy.

The othered victims are constructed in surprisingly similar ways in the rhetorics around lynching, the death penalty, and contemporary torture. All three figures are presented as both monstrous and cunning, beyond reason but dangerously manipulative and clever. The "black brute," the ostensible target of lynching, was a product of white male anxieties about race and gender control. He was constructed as a monster motivated only by a sexual desire for white women, but one clever enough that he could cloak his rapist ambitions in seemingly unrelated aspirations toward economic and social equality (Dray 60). While the death row inmate is more likely to be guilty of an actual crime, he is similarly constructed as a killing machine, an ongoing danger that even a "supermax" facility cannot control. He, too, is clever enough to work the system: manipulate the jury with stories of childhood abuse, lie to the parole board, lure guards and fellow inmates into dangerous situations. He is both entirely unreasonable, undeterred by any of the potential consequences of his actions, and intelligent and calculating. The terrorist is constructed as so bound to his violent culture and hate-filled religious beliefs that he will do anything to hurt the United States. He uses his cleverness only for evil; he cannot be engaged in a rational discussion because he has no personality outside of his mission, but he can engage in sophisticated psychological manipulation. These figures are constructed as only quasi-human, too single-mindedly evil to be recognizable as people. With these frames in place, it can be more challenging for community members to recognize that

these targets of violence experience pain.

That this violence is typically framed as a means of exacting "justice" is also relevant for the audience's response. All of these figures are presumed guilty. While torture in the War on Terror is typically constructed as preventative, victims of torture are constructed as guilty because of their presumed knowledge of a terrorist plot or connection with a terrorist organization. The justice frame suggests that the victim deserves the pain, but also that this pain is unavoidable, the necessary price of balancing the moral scales. As George Lakoff explains, understandings of retributive justice are not just about social control, but about a particular vision of morality. Believers in retributive justice would feel that proportional punishment is necessary to "[balance] the moral books" (80-81). If these victims of violence are constructed as guilty of significant moral wrongdoing, then, by this logic, communities are bound to punish them or risk their own good moral standing. If a viewer feels that someone's suffering is inevitable, it may not be because he or she feels powerless, but because of beliefs about the community's moral obligations.

Even a viewer that openly disapproves of the violence in question may view it as an unpleasant but necessary part of dealing with "the real world." Much of the rhetoric around these events contains claims based on political realism, "the doctrine that all successful political action requires relentless distinction between what is and what ought to be" (Hariman 14; note omitted). According to this rationale, unsavory actions are necessary because the world is an unsavory place in which idealistic ethics will inhibit success. This frame also allows for a diffusion of responsibility: citizens do not have to approve of violent practices, but they can accept their necessity and leave the actual

violence to the professionals. Jeremy Engels and William O. Saas argue that modern war rhetoric often functions this way in that it solicits acquiescence rather than approval. They explain, "the violence of the new war rhetoric is less about manipulation of individual psyches and more about the creation of a symbolic landscape in which resistance to objective violence seems pointless" (227). Frames that insist that violence is necessary, if not always desirable, allow individuals to lament the suffering they see without actually objecting to it.

To this catalogue of difficulties in recognizing someone else's suffering, I want to add the question of what is recognizable as violence. I note above that the violence in this dissertation hovers between visible and invisible, or subjective and objective. While I use the categories of "appropriate" and "inappropriate" violence, it is important to note that viewers and supporters of what I call "appropriate" violence may not perceive those practices to be violent at all because they do not carry the typical markers that make violence legible. The standards of decorum that characterize appropriate violence also obscure pain. Because of the dominant paradigm of pain, discussed above, "humane" violence is typically violence that *looks* humane because it minimizes visual evidence of bodily disorder. Lethal injection, for example, eliminates the burning and bleeding that characterized electrocution, and stealth torture constructs itself as more civilized than scarring torture because it does not mutilate the body. Without a clear indication that a body has been damaged, viewers may be less inclined to regard a phenomenon as violent. Additionally, the communal construction of appropriate violence deflects responsibility, at times making it seem as if the violence were an independent force rather than the result of a community's decisions. Given the emphasis on personal choice in rhetorics of

criminality, this obfuscation of the community's choices can also paint violent practices as significantly different from the violence they purport to punish and prevent.

These violent practices and their supporting rhetoric thus rely heavily on various forms of epistemic injustice. The frames through which we access much of this violence dehumanizes the victims by making their suffering unknowable or unimportant. The victims is erased as a subject except to the extent that he or she can be responsible for alleged evil actions. As I will discuss, the rhetoric around these violent actions also often discounts alternative interpretations that attempt to humanize these victims of violence. To make humanizing claims, these rhetors often suggest, is to deny the victims of alleged crimes their due respect. Together, these interpretive limits mask suffering and work to keep these forms of violence acceptable.

Spectacles of Violence

The term "spectacle" draws attention to how these violent practices function as public, multimodal texts. Some of the violent events discussed in this dissertation are spectacular in an obvious, visual sense. People can see them, either with or without the consent of their creators, and their visibility makes them the center of debate. But these events are also dependent on and reinforce various normative conditions, and as such, they are "spectacular" in the sense that Wendy Hesford uses to describe what she calls "human rights spectacles." Hesford injects nuance into Debord's concept of the spectacle as a means of domination, suggesting that "instead of thinking about the spectacle as a narcotic, we need to understand it as heterogeneous and as a rhetorically dialogic process that is nevertheless subsumed within repetitive forms" (19). The spectacle in this sense is

a coordinated flashpoint that reinforces particular values: in this dissertation, values that reproduce difference and enable violence. These violent spectacles are dialogic in that they build on and reinforce existing values. The spectacles guide audiences by defining ingroups and outgroups, explaining which issues are debatable, and defining who can participate in debate.

Using "spectacle" in this way provides an opportunity to discuss these violent practices as rhetorical systems, informed by and informing systemic and cultural violence. These events occur over multiple media, and differing levels of access and structures of visibility mean that the event itself is sometimes not even at the center of debate. Even lynching, the most visible of these practices, was not visible to all those who debated it. As I will argue in Chapter 1, much of lynching's effectiveness as constitutive rhetoric comes from its imaginative construction rather than its actual practice, so even a lack of consistent visibility would not eliminate lynching's significance as a cultural text. The torture debate is even more detached from actual practices,in large part because the mainstream narrative of torture is so distant from the stealth torture that characterizes modern democracy. This debate occurs at various levels of abstraction, based largely on hypotheticals: what if the person knew the location of a bomb? What if you had exhausted all other resources? These questions are detached from actual torture practices, but draw on popular culture representations of torture as a "last resort" that often produces results. These questions also reinforce assumptions about violence that enable actual torture: for example, that pain is quantifiable and its correct application is likely to yield useful information. The death penalty debate, too, is often detached from actual execution. Ravit Reichman notes that the execution itself often

appears as perfunctory in the public imagination, an uneventful conclusion detached from the drama of a trial (564). David Garland also notes that, because execution is so uncommon, the conversation around the death penalty is disproportionate, granting the practice far more value than the number of actual executions would seem to indicate (*Peculiar Institution* 10-11). Examining both the physical act of violence and the rhetoric through which people access it allows us to understand how obscured or partially obscured violence functions differently, rather than assuming that spectators must relate to all violent spectacles in the same way. These violent events and their surrounding rhetoric construct audience engagement, even when audiences do not have direct contact with the violence. Understanding these constructions also allows us to identify tropes that subtly support these violent practices, but that might not be recognizable when viewed in another context.

Discussing lynching, the twentieth- and twenty-first-century death penalty, and stealth torture as spectacle complicates Foucault's assertion that the "public spectacle" of torture declined by "the beginning of the nineteenth century" (8). Obviously, Foucault was thinking of spectacle differently, as a visible event that inscribed the power of the state on the body of its victim, and, as Markovitz argues, describing a transformation that affected only those granted the rights of citizens (118). But thinking of these violent practices, the latter two of which are largely and deliberately invisible, as spectacle also elevates them as a source of meaning about community and identity in a way that Foucault does not connect with modern punishment. While *Discipline and Punish* notes a distaste for bodily contact that is obvious in modern punishment procedures, modern forms of violence are still valued for what they can do to the body, which is a punishment

perceived to be more extreme than the ordering and management that prison offers. This violence is a source of conflicting feelings, many of which pro-violence rhetoric disavows, but it is also constructed as a key source of the community's power. This violent spectacle operates in a nuanced way, filtered through the restrictions that Foucault describes, so that it alternates between the embrace and denial of harming the body.

The way that these violent practices operate across media is part of what makes them function even when obscured, but their multimodality can also be a source of anxiety for supporters of violence. The violence's publicness legitimizes it, but a larger audience can increase the likelihood of dissent. The circulation of visual reproductions induces particular anxiety, largely because images are easily recontextualized and seem to produce unpredictable reactions. Photographs of lynching, for example, were originally produced and circulated among white Southerners, the intended audience for lynching's white supremacist message. Over time, however, anti-lynching organizations transformed these former souvenirs into tools of lynching's undoing. For example, the NAACP used photographs from Jesse Washington's 1916 lynching to inspire anti-lynching sentiment. In this context, the images "rendered the South, along with what were perceived as its backward and degenerate punitive practices, the object of a critical national gaze" (Wood 183). The torture photographs from Abu Ghraib are a more recent example. The photographs were "meant to stay within a like-minded community," but once released, they inspired opposition to the very practices that they were supposed to celebrate (Apel, "Torture Culture" 91). Because these violent practices operate based on existing understandings of particular outgroups, punishment, and the uses of violence, any recontextualization can disrupt meaning by removing the underlying beliefs that

legitimize violence.

The ease of image circulation in the twenty-first century would seem to increase the possibility of anti-violence recontextualization. Lynching photographs typically traveled as postcards, which necessarily limited their reach. Digital photographs move more quickly and, if they are made public, anyone with Internet access can see them. Viewers can also edit digital media easily, customizing the meanings of photos and videos and, if desired, sharing them with others. This circulation and modification does not always result in widespread anti-violence sentiment, in part due to reasons discussed above, but the possibility is clearly threatening. As I will discuss in Chapter 3, much of the Senate Armed Services Committee's initial hearing on the torture at Abu Ghraib focused not on the causes of abuse, but on why Secretary of Defense Donald Rumsfeld did not control the images' release ("Rumsfeld Testifies"). Eliminating visibility is the easiest way to fix a public relations problem, so any technology that increases circulation has the potential to foment dissent.

Official responses to these potentially problematic visual texts tend to focus on limiting the relationship between viewer and image through claims about "appropriate" looking. These standards are also a part of the violent spectacle in that they structure the terms of the audience's engagement with violence. Like "appropriate" violence, "appropriate" looking is distinguished by the audience's motives and behavior. The standards of decorum associated with appropriate looking are similar to those that define appropriate violence. Looking should be necessary, either because the viewer has a relationship to the violence—for example, a member of the victim's family may find it emotionally necessary to see the perpetrator's execution—or because the image has an

informative value that cannot be translated to other media. The viewer should also have the right feelings about the violence, although what those are will vary according to pro-violence rhetoric. In most cases, the "right" feeling is limited, a detached acknowledgement of tragedy that avoids emotional involvement. Typically, right feeling is only implied by the "official" or approved interpretation of the image. For example, when Bush and Rumsfeld suggest that the Abu Ghraib torture photographs do not represent America, they suggest that most Americans should feel largely unaffected by the images because they are informative only in that they show personal deviance. In insisting that only this reaction is appropriate, and in demonizing other reactions, the rhetoric around the Abu Ghraib images circumscribes audience relationships not just with the images, but with the physical violence that they document.

The pro-violence rhetoric around these violent images typically limits interpretation in part by projecting "wrong" reactions onto outgroups. Even within pro-violence rhetoric, the wrong response is typically that of the fictionalized Supreme Court Justices: elation and titillation. Because these arguments insist that appropriate violence is not designed to be thrilling, they also suggest that viewers who perceive it that way do so because of their own moral inadequacies. These arguments deflect any problematic features of the physical violence and the cultural violence that surrounds it onto an outgroup of spectators who are supposedly misinterpreting the violence's purpose, either because of hatred for or prejudice against the violence's authorizing community, a perverse enjoyment of the violence or the crimes that these violent acts allegedly punish or prevent, or both. In this way, the rhetoric around these violent practices can restrict visibility and narrow interpretive rights, even when the images are circulated widely or,

as was the case with lynching, the event occurs in public.

Scholars, too, have ideas about right and wrong ways of engaging with this violence, especially through images, and these ideas can overlap somewhat with the pro-violence regulations that structure engagement with these images and events. For us, too, there is one right way to look: witnessing, a politically and socially conscious form of viewing that can be geared toward improving social conditions. On the other hand, there are plenty of wrong ways to look: looking with apathy or without action, or looking in a way that reproduces the violence the victim endures. And while we approach these standards with a fair amount of nuance, binary understandings of viewership and "right" reaction can also keep us from understanding the internal logic of these violent spectacles. Engaging with these violent practices as spectacles allows us to think about right and wrong reactions differently because we can examine how the live performance and its surrounding rhetoric structure the relationship between audience member and violence. What reaction is this spectacle designed to elicit, and does that match its supporters' claims about its purpose? What reactions does that supporting rhetoric encourage or discourage, and why? Between open approval and open dissent, there is a wide range of complicit responses, many incarnations of which could constitute the "right" reaction according to pro-violence rhetoric. It is essential to consider the varieties of response and how norms of looking are defined in order to fully understand how this violence operates.

Looking at these violence practices as spectacle can help us see how the violence's complex normative work extends beyond the physical event or even its visual representations. These rhetorical acts of violence and their surrounding arguments make

claims not just about who is good and who is bad, but also meta-arguments about violence, looking, and punishment, all of which help to sustain approval for "appropriate" violence. These discursive structures restrict interpretation of violence more broadly, suggesting that individuals can engage with violence in only these limited ways without slipping into perverse spectatorship or misunderstanding key messages.

Trajectory of the Dissertation

In examining how this violence functions as a form of public discourse, this dissertation contributes to the scholarship of rhetoric's "public turn." David J. Coogan and John M. Ackerman note that rhetoric's public turn has encouraged scholars to do rhetoric "out there," to use the discipline to understand and participate in external conversations and to recognize debates that might have previously obscured by narrowed understandings of the public sphere (1-2). While the publics discussed in the dissertation are familiar, the ways in which these publics are organized around violent practices and shared interpretations of violence expands our understanding of what constitutes public discourse. Through analysis of these violent practices and their surrounding rhetoric, this dissertation will provide a clearer understanding of how this violence operates, why it persists, and how scholars and activists can better address it.

The problems associated with these violent practices are not solely rhetorical, and combating them is not either, but examining the rhetoric around these practices has potentially broad applications. Rhetorical engagement cannot solve the problem of violence; as Nancy Welch points out, the "rhetorical idealism" that insists that "with the right words, frame, or literacy event we can not only overcome material obstacles but

also make do without material resources" is obviously misguided (708). But these forms of violence are so deeply connected to particular worldviews and identifications that rhetorical investigation is a necessary step in reform, particularly given that the intricacies of this pro-violence rhetoric has received little attention from rhetoric scholars. Additionally, examining how these pro-violence arguments restrict debate through emphasis on decorum can increase our understanding of anti-activist rhetorics more broadly. As Young, Battaglia, and Cloud explain, "the norms of civility and decorum also operate as border patrols," limiting the ways in which activist scholars can "appropriately" or "respectfully" engage with issues of concern (430). The violent practices discussed in this dissertation are structured around and reinforce norms for appropriate violence, appropriate looking, and appropriate audience/violence relationships. Looking at the structuring norms that allow for assertions of argumentative control and narrowing of interpretive rights will help us understand how to combat them, as well as how to address violence without reproducing said norms.

Chapter 1, "'Obscene Intimations:' Restricting Interpretation in Pro-Lynching Rhetoric," examines pro-lynching rhetoric from the late nineteenth and early twentieth centuries in relation to the arguments that the live performance of lynching made for black and white Southerners. Scholarship on lynching largely agrees that lynching functioned as a means of reinforcing white Southern identity, and I argue that lynching's live spectacle sends a message of white interpretive power that extends beyond the live event. Through the analysis of pro-lynching arguments from Southern newspapers and two Senate filibusters of anti-lynching legislation, I argue that pro-lynching rhetoric mirrors lynching's implicit arguments in its focus on decorum and insistence on

counterfactual statements about lynching's purpose.

Chapter 2, "Obscurity, Emotion, and the Contemporary Death Penalty," analyzes death penalty retentionists' epistemologies of the death penalty in light of the modern death penalty's reform into a deliberate non-spectacle. This chapter examines how the parameters of the spectator/citizen's relationship with the death penalty is constructed when most individuals will never see an execution. I argue that, in lieu of the visual text, retentionist rhetoric suggests that community members should draw on their own "common sense" and normalized desire for vengeance to make decisions about the death penalty.

Chapter 3, "Constructing the Visible: Appropriate Looking and Inappropriate Audiences," addresses the deflection strategies that rhetors use to control interpretations of illicit images of organized public violence. These images present challenges in that they can provide information to viewers that pro-lynching rhetors may prefer to obscure and, when the images are widely circulated, provide information to viewers who were not included in the initial spectator/violence formulation. Removed from a controlled context, these images of violence are more likely to elicit reactions that can disrupt existing frames and inspire anti-violence sentiment or action. This chapter addresses how pro-violence rhetors frame these images to avoid those reactions through claims about appropriate and inappropriate viewing.

The Conclusion begins to examine some of the issues that are not fully addressed in this dissertation. The dissertation raises questions about implied understandings of "justice," legal epistemologies of pain, and the scholarly vocabulary around visual rhetorics of violence, and the Conclusion suggests "next steps" in pursuing answers. In

particular, the Conclusion explores how the dissertation's research might be applied to and enhanced by as-yet unexamined visual and multimodal texts, such as the book and exhibit *Without Sanctuary: Lynching Photography in America,* the edited YouTube versions of Saddam Hussein's execution, and the Moore's Ford lynching reenactment.

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"Obscene Intimations:" Restricting Interpretation in Pro-Lynching Rhetoric"

In 1934, police in Marianna, Florida, arrested Claude Neal, an African American farmhand, for the rape and murder of a young white woman named Lola Cannidy. Authorities moved Neal out of town immediately, and several more times subsequently, to decrease the chance that he would by lynched for his crime, but even Brewton, Alabama, more than 200 miles away from Marianna, was not far enough. A lynch mob took Neal from the Brewton jail, brought him back to Marianna, and announced that they would lynch him at the Cannidy farm that evening. Despite the publicity, the governor refused to step in without a request from the local sheriff. Ultimately, a "Committee of Six" lynched Neal at another location and then dragged his already-mutilated body to the Cannidy farm, where he was further mutilated and his corpse hung from an oak tree. Some of the mob members took pieces of Neal's body as souvenirs (Montgomery).

While unusual in some respects, Claude Neal's murder is typical of what Philip Dray calls "Southern spectacle lynching" (47). Lynching has a long history in the United States, but Southern spectacle lynching is distinct from earlier forms. Frontier lynching declined as towns grew, but racially motivated Southern spectacle lynchings increased with modernization, peaking between 1890 and 1920 (Dray 18). Additionally, unlike frontier lynchings, Southern spectacle lynching was marked by recurring ritual elements: attempts to elicit a confession, execution at the scene of the crime or in the town square, torture and mutilation, and occasional participation by the victim or victim's family. What happened to Neal happened in much the same way to an estimated 3,445 other

African Americans between 1882 and 1968 ("Lynchings, By Year and Race").

Claude Neal's lynching was also typical in its purported motive: punishment for rape. The rape justification for lynching was demonstrably untrue, even in lynching's heyday, but challenging this claim was hazardous. An exchange between Ida B. Wells and a group of lynching defenders illustrates the intensity with which rhetors deployed this defense. In 1892, Wells, in her first foray into anti-lynching activism, published a series of articles critiquing the rape justification in the Memphis *Free Speech*.

Wells famously wrote, "Nobody in the section of the country believes the old thread-bare lie that Negro men rape white women," suggesting instead that black men were often lynched for having consensual relationships that their white lovers later denied. In *Southern Horrors: Lynch Law in All Its Phases*, Wells documented a response published in Memphis' *Daily Commercial:*

> The fact that a black scoundrel is allowed to live and utter such loathsome and repulsive calumnies is a volume of evidence as to the wonderful patience of Southern whites. But we have had enough of it. There are some things that the Southern white man will not tolerate, and the obscene intimations of the foregoing have brought the writer to the very outermost limit of public patience. We hope that we have said enough.

This piece was not the only threat Wells received—in fact, the response to this incident motivated her exile from the South—but it is notable in that its insistence on the rape justification forces the authors to make a contradictory argument. The article implies that Wells could be lynched for disputing the authors' narrative of lynching and, by doing so, verbally attacking white women's honor.

In other words, Wells deserved lynching not because she had committed a horrible crime, but because she had an "incorrect" and therefore offensive interpretation of lynching.

The vehemence with which these authors responded to Wells' argument suggests the rape justification's importance in pro-lynching rhetoric. Framing lynching as a punishment helped justify the practice by projecting barbarity onto the victims rather than the lynchers. But this frame also served, along with the lynching itself, as a nexus of understanding through which key community beliefs were reinforced. The authors' insistence on one understanding, even as they contradict it, reflects the standards set by lynching's extreme white supremacist message. According to lynching and its surrounding rhetoric, white Southerners had the exclusive ability to determine and enforce standards of behavior, including standards of argument. It did not matter whether Wells was right because lynching was a shared text that only white Southerners could interpret. The rape justification, along with other key tropes of pro-lynching rhetoric, thus helped to mark the speaker as an adherent to a particular set of Southern, white supremacist values.

Existing scholarship has established that lynching was a form of public discourse that sent messages both through its physical construction and its rhetorical framing. This chapter will suggest that pro-lynching rhetors' often-contradictory or obviously untrue claims are important because lynching was as much about shared understandings of violence and decorum as it was about a physical performance of white supremacy. In this chapter, I will examine how pro-lynching rhetoric mirrored lynching's implicit messages about standards of argument and the nature of justice and functioned as a supporting form

of cultural violence that reinforced white supremacist ideology. I will first discuss how the live performance of lynching reinforced a version of white Southern identity based on the power to kill. Then, I will examine representative arguments in Southern newspapers and within two Democratic filibusters of anti-lynching legislation in 1922 and 1934 to better show how these arguments performed and translated lynching's implicit values. Ultimately, I will suggest that these arguments erase violence even as they support it by constructing a community based in large part on *interpretations* of violence, rather than the violence alone.

While Southern spectacle lynching diminished significantly after 1935, it retains a special rhetorical place in arguments about contemporary violence and punishment ("Lynchings by Year and Race"). Lynching often is framed as the wrong kind of violence, the "other" of the contemporary death penalty. Anti-death penalty arguments attempt to collapse this distinction, suggesting that modern execution is more similar to lynching than pro-death penalty rhetors would like to admit. Regardless of how it is being used in an argument, lynching serves as a key example of inappropriate violence: brutal when it should be restrained, discriminatory when it should be fair, fun when it should be dutiful. Contemporary understandings of what constitutes appropriate violence are based in part on lynching's negative example. But pro-lynching rhetors, while advocating violence that seems obviously inappropriate, were also concerned about the right way to do and feel about violence, and especially the right way to speak about it. Concerns about civility and decorum structure much of pro-lynching rhetoric. By examining how pro-lynching rhetors controlled interpretations of lynching, we can see how familiar understandings of justice and civility were mobilized to support lynching's physical

violence.

Lynching as Epideictic

Lynching scholarship often focuses on debunking misconceptions about lynching (that it was caused by rape, that it represented a loss of control) and explaining the seeming oddity of its widespread acceptance. Scholars agree that lynching's primary purpose was expressive, a means of reinforcing unstable values in the modernizing South. Lynching was a form of race, gender, and class control that worked by terrorizing blacks, ignoring the possibility of women's autonomy, and masking class conflicts with white supremacist rhetoric ("Penal Excess" 798; Wood 4-8). Lynching's "sadism and bloodletting . . . was a performative affirmation of fundamentalist Christian faith in a white supremacist national community," affirming the community's covenant with God by purging the "blackness" that had violated it (Ehrenhaus and Owen 277). It was an affirmation of an imported belief in citizens' justice and an entrenched honor culture (Ehrenhaus and Owen 282). Lynchers did not need to lynch to ensure punishment, or even public punishment. While most Northern states had phased out public execution during the nineteenth century, Southern states lagged behind, and a black man accused of rape or murder in the South was virtually guaranteed to be executed, and rapidly (Wood 23). But lynching, with its excessive violence and emphasis on the community's power, performed important cultural functions for Southern communities. Working in tandem with other methods of social control, lynching preserved a "way of life" that some Southerners would have felt was under constant threat.

The arguments lynching made, then, extended beyond its live performance. They

were arguments about what it meant to be white and Southern, and they suggested Southern values that could be performed even when a lynching was not in progress. Lynching constructed a united white supremacist community, the power of which was so extreme that it need not cloak itself in systemic machinations. It suggested that the white community was the true source of the law, and whiteness was the true source of power. Particularly when viewed in the context of Southern honor culture, lynching suggested that white Southerners could and should respond to insult with violence, and anything other response was tolerant. Because of its clarification and performance of community values, we can think of lynching as an epideictic argument, one that establishes terms of engagement that structure the ostensibly deliberative written and spoken rhetoric around lynching.

While thinking of lynching as communicative is common, thinking of lynching as epideictic may feel like more of a stretch. Lynching fits the criteria for epideixis, however, because of its construction and function as a cultural performance. Epideictic arguments typically highlight desirable or undesirable behavior by providing examples, thereby linking abstract values to concrete deeds to shape the audience's attitudes and actions (Hauser 16). Modern rhetoricians suggest that this genre is important in large part because of its ability to structure the terms of future debates. Jeffrey Walker explains,

> "epideictic" appears as that which shapes and cultivates the basic codes of value and belief by which a society or culture lives; it shapes the ideologies and imageries with which, and by which, the individual members of a community identify themselves; and, perhaps most significantly, it shapes the fundamental grounds, the "deep" commitments and presuppositions, that will underlie and

ultimately determine decision and debate in particular pragmatic forums. (9)

Epideixis, then, influences or even forms the commitments that structure arguments. This is no minor task; as Hartelius and Asenas explain it, epideictic rhetoric "instructs audiences on how to *be* in a community," encouraging particular outlooks that will structure the audience's future public and even private engagements (369). According to this understanding, epideictic rhetoric can prepare the ground for productive public deliberation by instilling shared values, and much of the work on epideictic rhetoric's civic functions has talked about its positive effects. Lynching, obviously, works differently. By discouraging deliberation and reinforcing divisions between groups, lynching suggests a worldview that severely limits productive debate.

Lynching's "argument" to black Southerners, its most notable communicative function, suggested standards of debate that we will see continued, albeit in a nonlethal fashion, in pro-lynching rhetoric. While framed in part as a deterrent argument, warning black men not to rape white women, lynching's real argument was that "a negro's life [was] a very cheap thing," and thus black Southerners should avoid even the slightest conflict with their white counterparts (qtd. in Dray 16). While lynchers typically had the pretext of some misdeed, however inconsequential, lynchers did not prioritize finding the correct perpetrator or even verifying that a crime had occurred.

That near-randomness made lynching a form of terrorism. The few gestures lynchers made toward accuracy only clarified their extremely low evidentiary standard. Victims were occasionally asked to identify suspects, but usually when the suspect was already in the custody of an angry mob. One victim "identified" her assailant based on a photograph of the suspect's corpse, taken at his lynching (Wood 83-84). The blatant mockery of legal

proceedings implicit in these half-hearted rituals emphasized the pointlessness of resistance. Lynchers controlled information as well as bodies, making only the smallest effort to justify their actions. These features of lynching told black Southerners that their best chance at survival was to leave or go unnoticed, since their very existence was punishable by death.

In this capacity, lynching was an argument about the impossibility of deliberation. Lynching's emphatic refusal to negotiate is anchored in Southern honor culture. Kenneth S. Greenberg explains that Southern men of honor, who could be white men of any class, were "concerned, to a degree that we would consider unusual, with the surface of things—with the world of appearances" (58). Whether a man was honorable was determined not by some internal essence, but by his own projections and their acceptance by others. If others accepted a man's actions and appearance as those of an honorable man, then he was honorable; if anyone questioned them, then he was obliged to fight to prove his honor. These fights were detached from the truth value of the specific accusation. Greenberg quotes Benjamin Franklin, who remarked, "A man says something which another tells him is a lie. They fight, but whichever is killed the point in dispute remains unsettled" (66). Men of honor were obligated only to demonstrate their intolerance for insult, not to prove that the insult was untrue. The willingness to fight for his honor was proof enough that a man was honorable.

In this context, the *Daily Commercial* letter that threatened to lynch Wells for her "obscene" opinion makes sense. Lynching was framed as a defense of white women's honor, and while, in practice, it was clearly more focused on white supremacy, a man of honor could not accept any challenge to his self-projection. Wells accused lynching

defenders of lying, and according to the behavioral standards of honor culture, they would have to fight her to defend their images. That Wells' argument would have also been construed as an insult to white women's honor would have given lynchers additional motivation to harm her. These insults were considered more or less the same as physical assault because they threatened Southern men's personhood in an identical fashion. An understanding of how lynching reinforces the values of honor culture makes it clear that this violence was not considered extreme, but a necessary means of preserving identity. Thus, the contradictions in the pro-lynching argument—we only lynch for rape, and we'll lynch you if you say otherwise—are representative of the broader, antagonistic worldview of which lynching is a performance.

Lynching also reinforced extreme habits of mind by establishing laughable standards for what constituted "tolerance" through the construction of an extreme form of white supremacy. As David Garland notes, lynching's excessive violence was deliberate, a means of "flouting . . . the norms of modern law and civilized penology . . . intended to degrade and defile black offenders" ("Penal Excess" 814). Lynching's version of white supremacy was centered on total power over black bodies. Lynchers did not just have the power to kill, but the power to torture, dismember, and take body parts as souvenirs, all without fear of prosecution. If honor culture obligated men of honor to violence, lynching suggested that, when this violence was directed at non-whites, there was no need for restraint. Anything less than brutal murder was tolerant, so all other forms of social oppression and lesser violence were, by default, merciful.

In addition to telling people how to react to offense, lynching made a claim about which issues white Southerners should care about. Southern spectacle lynchings

increased with modernization, as Southern communities "were undergoing an uncertain and troubling transformation in modern, urban societies" (Wood 5). By the late nineteenth century, urbanization and industrialization were changing how many Southerners lived, and while Southern states had eliminated many of the rights afforded to African Americans during Reconstruction, these new environments augmented anxieties about African Americans entering the middle class and gaining social and political power. White workers, whose status was more unstable than that of their wealthier counterparts, would have felt particularly threatened by the cheap labor that black workers could provide. Late nineteenth-century political appeals to the poor and working class voters also drove a wedge between white elites and the working class, "then further angering poor whites" who were disenfranchised when new laws were put into place to prevent the People's Party from overthrowing Southern Democrats using the black vote ("Penal Excess" 799-800).

Lynching alleviated social and economic anxieties by reinforcing white supremacy's place as the key feature of Southern life. Lynching's version of white supremacy, then, was both extreme and limited. While it was excessively violent, establishing a great deal of white power over black bodies, it also suggested that race was all that should matter to whites. The spectacle of lynching argued that white supremacy did not mean economic equality among whites or even universal economic superiority of whites over blacks. Poor whites could live and work in conditions that looked very much like those to which their black counterparts were subject. White supremacy was detached from economics and constructed as the right to kill people of other races with impunity, replacing a systemically disruptive form of power with one that maintained the status quo

for elites. Lynching assured viewers that nothing mattered as long as they were white, so white supremacy was the value that Southerners most needed to defend.

The value lynching puts on racial difference does not prevent the transmission of its implied behavioral standards—intolerance of insult, especially insult related to the white supremacist way of life—to white-on-white interactions. Lynching's connection to honor culture and citizens' justice draws on longstanding discord between North and South, suggesting that lynching's version of white supremacy is specifically Southern. Many Southern rhetors saw the loss of white supremacy as the primary threat of Reconstruction, so maintaining white supremacy was tied up with regional conflict and anxieties about Northern intrusion on the Southern "way of life" (Towns 98-99). While Southern constructions of the Civil War substituted "states rights" for "slavery" as the war's primary cause, post-war rhetoric saw Reconstruction's potential upending of race relations as an important aspect of the North's subjugation of the South (Blight 2). As a dramatic exercise of white supremacy, lynching reinforced the South's identity in specific opposition to the North. Lynching's rejection of the formal judicial system enhanced this argument in its suggestion of deeply local commitments. For this reason, we can view lynching's construction of white Southern identity in opposition to Northerners as well as to African Americans.

Lynching is somewhat unusual as epideictic rhetoric in that its key claim about white unity and supremacy is anchored in the audience's presence. Without the audience, not only is the argument of white unity unconvincing, but the lynching's legitimacy becomes suspect; as Susan Jean explains, lynchers carefully policed the use of the term "lynching" in order to control its meaning, and murders that were conducted with too

much secrecy were denied the label. This reliance on the very group that that the argument tries to persuade for the persuasive force of the argument separates lynching from epideixis as rhetoricians have traditionally conceived it. Rather than the work of a single rhetor, organization, or text, lynching is an argument both collective and coerced, one that does not rely on the spoken consent or fully conscious participation of its audience.

Getting audiences to adhere to these minimal standards of behavior—show up and don't cause trouble—was evidently easy. While horrifying to modern audiences and likely to many contemporary spectators as well, the construction of lynching's live performance discouraged open dissent. As I noted above, lynching also drew on the rituals of public execution and often intersected with official legal proceedings. For example, lynch mobs would sometimes hang out around the courthouse, waiting for the accused to be convicted so that they could lynch him. Because public executions were still permitted or had been within recent memory, spectators could also know what it was like to see someone hanged and that it was acceptable to watch. Additionally, group pressure would make spectators more likely to adhere to the behavioral standards that made lynching "work" as a performed argument; if everyone else is having a picnic, then yelling for help or attempting other intervention becomes abnormal, even in response to horrific violence. Lynchings were common and generally followed the same pattern of events, spectators could also use their first- or second-hand knowledge of previous lynchings to ascertain how they were supposed to act (Fuoss 7). Thus, lynching's place as a persistent cultural phenomenon and a procedural and conceptual cousin to public execution meant that the event could shape its audience to be the "right" audience: one

that was unlikely to cause trouble and fairly likely to have fun.

The need for only apparent audience adherence also intersects with Southern honor culture. Some lynching spectators were likely disturbed by the events, but lynching "worked" as an argument for white supremacy as long as they did not show their distress. Lynching was dependent on everyone present pretending to accept its key argument; if they were experiencing internal discord, it did not matter. This dismissal of internal states reinforces honor culture's privileging of appearance, providing a model for what white supremacists should demand of others. In order to perform white supremacy, a man would need to both act superior and demand that others recognize his superiority.

The vision that lynching constructed of "how to *be* in a community," then, was highly adversarial and focused on a particular kind of performance. Lynching took existing values of white supremacy and honor and performed them in an extreme way, providing a model of Southern identity based on a shared worldview and its brutal defense. By looking at lynching as an epideictic, we can see these tropes as centered on but not exclusively concerned with violence. Pro-lynching rhetoric espouses pro-lynching values, but it also performs them by refusing any form of deliberation, taking all insults as malicious Northern attacks, and framing the lynching debate as a question of the South's reputation. These arguments insist that the opposition discuss lynching in a specific way, and the failure to do so is constructed as a great offense. The rhetorical refusals that permeate pro-lynching rhetoric illustrate the way that both lynching and its interpretation were linked to conceptions of Southernness.

Reputation and Southern Identity

Given the particular values and habits of argument that lynching encouraged, it's not surprising that we see a lot of pieces in Southern newspapers that frame the lynching debate as mostly about reputation. These articles respond to the prominent anti-lynching argument that lynching is not an honorable defense of white women and that lynchers, rather than lynching victims, are the "savages." Anti-lynching rhetors note that lynching does not fit widely-held standards for civil behavior, not least of all because it often involves the display and castration of a nude black man in front of the delicate women and children that lynching was supposed to protect (Wood 15). For example, a 1935 National Association for the Advancement of Colored People (NAACP) pamphlet includes a photograph of a lynching with a caption that reads, "Do not look at the Negro. His earthly problems are ended. Instead, look at the seven WHITE children who gaze at this gruesome spectacle" (qtd. in Wood 206). While some of these anti-lynching arguments attempt to detach the pairing of whiteness and civilization, others make use of racial anxieties by suggesting that lynching makes white men, as Ray Stannard Baker put it, "as savage as the negro" (qtd. in Bederman 52). Like many anti-slavery arguments, these arguments emphasize the damage that lynching can do to whites, thereby appealing to elite anxieties about civilization, taste, and the possibility of backsliding into a more savage state.

As Gail Bederman notes, these arguments had a greater public impact than those that focused on black suffering (46). But responses to these anti-lynching arguments do not expend much effort to dispel the claim that lynching is barbaric. Instead, they frame all anti-lynching criticism as personal attacks motivated by regional antagonism, and, in doing so, make acceptance of lynching into a characteristic of Southernness. Another

response to Wells' editorial, cited with minimal commentary in *Southern Horrors,* is representative. The author insists that lynching is civilized and blames Northern malice for all statements to the contrary. The author writes*:*

> The lynching of three Negro scoundrels…for a brutal outrage committed upon a white woman will be a text for much comment on 'Southern barbarism' by Northern newspapers; but we fancy it will hardly prove effective for campaign purposes among intelligent people. The frequency of these lynchings calls attention to the frequency of the crimes [sic] which causes lynching. The 'Southern barbarism' which deserves the serious attention of all people North and South, is the barbarism which preys upon weak and defenseless women.

The article, entitled "More Rapes, More Lynchings," assumes that there is no real dispute about lynching's civilized nature because all "intelligent people" will accept the claim that rape causes lynching. The author's address of these criticisms focuses on exposing the Northern bias that supposedly motivates them. The article's reference to "campaign purposes" suggests that even Northerners believe the rape defense, but argue to the contrary to damage the South's reputation, possibly with the intent of wooing black voters. Most importantly, the argument suggests that lynching defenders need not defend lynching in any detail, but can simply reiterate the claim that lynching causes rape and point out the alleged ulterior motives of anyone with a different opinion.

An article from 1900 entitled "The Adams Bill" is similarly concerned with reputation, and suggests that critics of lynching are motivated solely by their own anger and moral inadequacies. Opposing accusations of Southern barbarity, the author argues that lynching is actually a sign of civilization:

> It is unfortunate that there are lynchings, but in every case the lynching is but a consequence of an outrage against humanity which drives good and law abiding citizens into momentary frenzy . . . There does not exist…a more law-abiding, a more humane, a more chivalric and a more high-minded people than those of the state of Mississippi, and it is these very qualities which, in the presence of an outraged woman, seeks a outlet which gives excuse to people abroad to denounce lynch law without ever once seeking to cast odium upon the provoking crime.

Like the previous argument, this argument projects the problem onto outsiders, suggesting that lynchers are morally superior to those who speak out against lynching. The article argues that lynching is an "excuse . . . to denounce lynch law," indicating that individual lynchings remind malicious "people abroad" of their distaste for this Southern custom, thus inspiring them to periodically air their grievances. This construction suggests that any criticisms of lynching are based on individual malice and are not well sustained; Northerners hear of a lynching, take the opportunity to call Southerners barbarians, and then go back to their business. These anti-lynching arguments are given even less weight because their proponents are also constructed as morally corrupt. The author states that anti-lynching rhetors do not "cast odium upon the provoking crime," suggesting that these rhetors do not care about rape or rape victims. While the people in Mississippi are "high-minded," the argument suggests that their critics are petty, letting personal prejudices against the South override the more pressing concern of sexual violence.

Importantly, "The Adams Bill" argues that the potential for "misinterpretation" is reason enough to quash anti-lynching legislation. The author argues that proposed

legislation "would give abroad a false impression of the people of Mississippi" and of lynching as the product of a "large and unruly criminal class," rather than the model citizens he describes. This part of the argument assumes that understanding lynching as a crime is incorrect, reinforcing the idea that lynching has only one true meaning and that people "abroad" are likely to misunderstand it. It also suggests that promoting the "correct" understanding of lynching is a public goal because these understandings are deeply tied to Mississippian identity. If people misunderstand lynching, they will misunderstand Mississippi, and the author argues that legislators cannot allow that.

Amy Wood cites an 1895 piece from the *Atlanta Constitution* that also expresses concern about the impression that lynching photographs will give non-Southerners. After the *New York World* published a lynching photograph, the *Constitution* "objected to the display of the photograph because it 'pander[ed] to a base taste' of those 'readers who delight in everything that is exceptionally horrible.' The *Atlanta Constitution* further expressed concern that such images only fueled the national perception that 'the South was a land of barbarians'" (Wood 105). The article's concern is of particular interest because it assumes that images of violence will provide the "wrong" impression of lynching and the South as a whole. As Wood notes, viewers in this time would have seen pictures as straightforward reflections of reality, so it is unlikely that the paper is concerned about the image falsifying events (205-206). The problem, as it is constructed in the article, is misinterpretation caused by deviant viewers. The article implies that Southerners are more equipped to interpret the text of lynching, and, again, that Northerners are deviants who will jump on any opportunity to ridicule the South.

These arguments balance rhetorics of power and victimhood in a way that reflects the argument of lynching as a live performance. The rape justification, as well as the broader structure of honor culture and the lost cause, allows lynchers to represent themselves as both imperiled and powerful. Within pro-lynching rhetoric, everything lynchers do is in response to a threat, and even minor insults can be construed as assaults on Southern identity. Lynchers are powerful because they define the threat, the appropriate response, and the narratives around their violent practices. Pro-lynching rhetoric builds on this victim identity by constructing the South as a victim of unfair criticism. Responding to an article in the *New York Herald* that asks, "Do the southern people realize what an undesirable reputation they are making for themselves in America and Europe by the frequency with which they indulge in lynching parties?" another author responds, "No; but they do fully realize the 'undesirable reputation' that *northern journals* are making for them, by falsely and maliciously exaggerating their misdeeds and misrepresenting their conditions." The author goes on:

> Why is it that northern papers avail themselves of every opportunity, even the most trivial circumstance, to speak deprecatingly and disparagingly of the south, and represent our social condition in such exceptional and exaggerated colors, when their own section is reeking with tenfold worse crimes?

The argument represents the South as the victim of malicious Northerners and suggests that anti-lynching criticism is comprised of deliberate lies. Like "The Adams Bill," this article characterizes Northerners as petty and morally corrupt and diverts attention from lynching's violence by making the South the real victim.

It is clear, however, that these arguments exert power in their claims of victimhood.

In addition to reserving for Southerners the power to kill, all of the arguments discussed in this section insist on certain rules of debate, things that the opposition cannot or must say. For example, "The Adams Bill" suggests that no one should critique lynching without also expressing sympathy for rape victims or anger toward rapists. The argument above in response to the *New York Herald* suggests that anti-lynching Northerners must also note that lynching is less serious than the "tenfold worse crimes" that allegedly plague Northern cities. These arguments make a pretense of setting reasonable rules for debate. They suggest that perhaps lynching is something that Northerners and Southerners could discuss, if Northerners would only adhere to these standards of politeness. But concession on either of these points would be serious because it would mean accepting an understanding of lynching that is also a point of identification among lynchers. A rhetor who downplays lynching's seriousness and regional particularity or accepts the rape justification severely limits his or her capacity to destabilize lynching's cultural foundations. The undertone of these arguments is that anyone who disagrees with this understanding of lynching is insulting Southerners, and the only way to avoid this disrespect is to accept pro-lynching claims.

These arguments illustrate how pro-lynching rhetoric ties lynching to Southernness. These authors do not distinguish between calling lynching barbaric and calling lynchers barbarians. Instead, criticism of lynching *is* criticism of the South. They also suggest that all criticisms of lynching must be based on anti-Southern sentiment; in other words, Southerners are not just taking these critiques personally, but insisting that anti-lynching rhetors are motivated by hatred for the South. In this way, pro-lynching rhetoric makes the lynching debate a struggle to reinforce identity, constructing anti-lynching opinions as

indicative of "outsider" status and pro-lynching opinions as a requirement for true Southernness. Just as lynching reinforces a specific conception of Southernness through a performance, these arguments create in the lynching debate a second site at which individuals perform their allegiances. Even if someone cannot attend a lynching, he or she can perform pro-lynching values by insisting on the rape justification and taking any opposition as a personal insult.

The Rape Justification and the Refusal to Deliberate

Lynching and pro-lynching rhetoric both suggest that white Southerners should understand anti-lynching arguments as personal attacks that they do not have to tolerate. Arguments from two Senate filibusters of anti-lynching legislation perform these values in part through an insistence on two counterfactual claims about lynching. The first of these claims is the aforementioned rape justification, used here to demonize Northerners and illustrate regional and party loyalty. Participants in these filibusters repeatedly insist that lynching is a response to rape and use the lens of the rape justification to interpret the proposed bills' potential impact. In doing so, these pro-lynching rhetors perform lynching's refusal to deliberate in a different context, thereby adhering to lynching's implicit standards for argument.

Of the many proposed federal anti-lynching laws—nearly 200 such laws were proposed between 1882 and 1968—the Dyer Bill (1922) and Costigan-Wagner Act (1934-35) were among the most successful, both passing the House of Representatives before falling off the Senate agenda after filibusters by Southern Democrats ("Senate Apologizes"). Both acts would have criminalized state officials' failure to protect an

individual from lynching or to prosecute those responsible for the lynching. The bills argued that such failures were a violation of the Equal Protection Clause of the Fourteenth Amendment and, as such, the proposed legislation allowed for the accused to be tried in federal district courts, "provided it is shown that the state officials have failed, neglected, or refused to act or the jurors in the State courts are so strongly opposed to such punishment that there is no probability that the guilty can be punished" ("Antilynching Bill" 8). Both bills also permitted the federal government to collect funds from the county in which a lynching took place to pay the victim's family or, if he or she had no family, "for the use of the United States" (*Congressional Record* 19 April 1935 6001).

The features of pro-lynching rhetoric discussed in this and the following section are pervasive, appearing in many speeches and editorials from lynching's heyday. I draw attention to these filibusters in particular because they offer an extended look at pro-lynching arguments, including some responses (or, more accurately, some explicit refusals to respond) to anti-lynching claims. The filibuster as a form is also consistent with pro-lynching standards of argument in that it is designed to prevent debate. The pro-lynching arguments within the filibuster are epideictics, performances of Southern Democratic values, but in this context, the filibuster is a performance of those values as well. The filibuster is the ideal context for performing pro-lynching values because it grants speakers plenty of opportunities to ignore, or solicit and dismiss, opposing perspectives.

While the rape justification appears less frequently in the Costigan-Wagner debate, it is prominent in both discussions. Often, as in the arguments discussed above, this trope

appears as an attack on the morals of anti-lynching legislators and an attempt to shape the debate's trajectory. For example, in the Costigan-Wagner debate, Senator Park Trammell (D-Florida) expresses repeated concern that the law's framers are not adequately attentive to victims of rape. He states,

> It seems to me that the authors of the bill were more solicitous of the person who may have suffered the fate of being lynched than they were of the victim of the criminal who outraged the public to the point of bringing about the lynching, for if they had not been, why did they provide for fining a county and getting compensation from a county for the members of the family of the one lynched, who, in the first instance, provoked the mob? (*Congressional Record* 29 April 1935 6524)

This argument rejects the structure of responsibility that the Costigan-Wagner Act suggests. Consistent with the rape justification, Trammell's argument places tremendous emphasis on the lynching victim's responsibility, referring to "the criminal who outraged the public" and "who . . . provoked the mob," while constructing the lynching itself as almost incidental ("the person who may have suffered the fate of being lynched"). Because "outrage" was a synonym for rape in this time period, Trammell's claim that the lynching victim "outraged" the public constructs the whole community as a victim of the assault that Trammell assumes inspires the lynching. In this way, Trammell reinforces the understanding that lynchers are the real victims. Additionally, like the authors discussed above, Trammell projects belief in the rape justification onto the opposition, insisting that this understanding of lynching is self-evident. The senators sponsoring the bill are thus painted as morally corrupt, too concerned about other issues (specifically, securing the

black vote) to care about victims. By refusing to engage the bill or its authors on their own terms, Trammell exerts control over the conversation, narrowing the possible interpretations of the legislation.

Another version of the rape justification, and a further narrowing of interpretive rights, appears in Senator Thaddeus Caraway's (D-Arkansas) insistence that the Dyer Bill is designed to legalize the rape of white women by black men. Caraway argues:

> I am sure, although I have no way to substantiate it, that a society known as the society for the protection of the rights of colored people wrote this bill and handed it to the proponents of it. These people had but one idea in view, and that was to make rape permissible, and to allow the guilty to go unpunished if that rape should be committed by a negro on a white woman in the South. (*Congressional Record* 29 Nov. 1922 400)

Like Trammell, Caraway reserves interpretive rights for himself and like-minded individuals, claiming that only they can understand the true nature of anti-lynching legislation. Caraway's argument ignores the substance of anti-lynching arguments, as well as the substance of the bill, insisting that the rape justification is correct and that all reasonable white people believe it. Caraway's argument draws on the commonly held belief, that "sex with white women was the real objective behind all black aspiration" (Dray 60). This belief, a manifestation of white male sexual anxiety, allowed white supremacists to argue that even elite, intellectual black men were criminals and sexual deviants**.** Perhaps most important, however, is that Caraway claims to understand the bill, its origins, and its authors' intent without evidence. While he notes that has "no way to substantiate" his claims, he is still "sure" of them. Caraway reinforces pro-lynching

beliefs and significantly narrows interpretive rights by suggesting that his instinctive understanding of the Dyer Bill is sufficient. Just as men of honor required others to accept their self-presentations, Caraway gives his opponents no option other than to accept his claims, since he makes it clear that he is not open to persuasion.

Caraway's interpretation of the bill's text is similarly detached from the evidence. In defining the sort of crime to which the legislation would apply, the bill describes a "mob or riotous assemblage" as a group of three or more who kill or attempt to kill someone "as a punishment for or to prevent the commission of some actual or supposed public offense" ("Antilynching Bill"). The bill's text does not specify that the accused has to be guilty or even accused of a crime, since "public offense" could encompass both crimes and social transgressions. But Caraway argues that "public offense" can only mean "a violation of the law," so the Dyer Bill would not punish state officials for failure to intervene in or prosecute racially-motivated or labor-related mob violence. In a lengthy exchange with Senator Albert B. Cummins (R-Iowa), Caraway states that the bill

> undertakes to punish mobs if they lynch a man guilty of an offense, however heinous it may be. If he is lynched because of his race, his occupation, his place of dwelling, or because he is unpopular, the framers of this measure are willing that the mob may kill him for any of these causes; but if the one lynched be guilty of an offense, if he be guilty of outraging a woman and then meets summary justice by the hands of a mob, they, the proponents of this bill, say, "We will not stand for that. You may kill the innocent, but you must not kill the guilty without becoming amenable to the laws of these United States." (*Congressional Record* 29 Nov. 1922 400)

This portion of Caraway's argument extends his initial claim, that the bill would affect only situations in which the lynching victim is accused of a crime, to insist that the bill would affect only situations in which the lynching victim is guilty. Caraway thus reinforces both his own interpretive rights and the rape justification. In spite of textual evidence, he argues that punishing those who punish the guilty is the bill's intended purpose.

Caraway's performance in the filibuster may seem absurd. He proceeds as if all his points are self-evident, even when other senators attempt to contest them, and refuses to acknowledge any potential opposition to his reading of the proposed legislation. His behavior suits the circumstances, however, because it reinforces the rhetorical refusal implicit in lynching and in his participation in the filibuster. Patricia Roberts-Miller explains that, in some cases, absurd statements "do not function as an assertion of reality, so much as a performance of . . . party loyalty" (40). Caraway's refusal to justify himself or engage with opposing arguments shows his devotion to this understanding of what it means to be Southern. His blatant mockery of deliberation, in which he repeatedly questions Cummins only to disregard his answers, illustrates for his cohort the depths to which his beliefs are entrenched.

Looking at the rape justification's deployment in these filibusters, we can see that its function was not just to delineate appropriate violence by its honorable motive. As a means of performing pro-lynching values, the rape justification reinforces the overall superiority of white Southerners. The implicit suggestion, then, is that lynching is acceptable not because of it responds to a crime, but because the group responsible is defined in part by doing whatever it wants and insisting that everyone else accepts it.

With this underlying logic, the rape justification is effective because of, rather than in spite of, its untruth.

Racism and Regional Antagonism

A similar rhetorical refusal occurs in pro-lynching senators' widespread insistence that lynching is not racially motivated. It is somewhat surprising how frequently race comes up in these debates because neither the Dyer nor Costigan-Wagner bill specifically mentions it. It may also be surprising to modern readers that defenders of lynching, an obvious performance of white supremacy, would bother to argue that they were not racist. The insistence that lynching was about crime rather than race performed several important functions, however. Like the insistence on the rape justification, these arguments reserve interpretive rights for pro-lynching Southerners. These claims also distinguish appropriate and inappropriate violence by erasing systemic violence, thereby reinforcing an understanding of violence and racism that benefits lynchers.

Rhetors in both debates use a self-serving definition of racism to draw distinctions between Southern lynching as "punishment" and racially-motivated crimes in the North. As ever, Caraway's argument is a good example. Caraway states, "In the South we never do put a negro to death simply because he is a negro. We put him to death, if at all, for some crime. In the North they sometimes shoot him, as they did in East St. Louis, simply because he is black" (*Congressional Record* 29 Nov. 1922 401). The East St. Louis riots to which Caraway refers were similar to Southern lynchings. While the perpetrators were ostensibly targeting black strikebreakers, in reality, they killed blacks indiscriminately, burning down black neighborhoods and killing women and children (H. Barnes 1-2).

Caraway's argument separates this incident from lynching by erasing the systemic and cultural racism that constructs blacks as violent criminals and permits whites to lynch them in public. Here, racism is something personal, a character flaw that precludes Northern criticism of Southern race relations. In maintaining that lynching is honorable and distinct from other forms of violence, Caraway manages to sustain ideals of white supremacy while arguing that Northerners are the real racists.

Caraway's erasure of the racist beliefs that motivate lynching suggests that blacks are to blame for their disproportionate representation among lynching victims. This framing is a subtle extension of the rape justification. Senator Kenneth McKellar (D-Tennessee) makes a similar claim in an exchange with Senator Frank Willis (R-Ohio)**.** Willis disputes McKellar's claim that lynchings "are getting to be more prevalent in the North in comparison to the total population, than in the South," but the two senators have different understandings of the population to which McKellar refers (*Congressional Record* 29 Nov. 1922 388). When Willis reads statistics that show that there are more lynchings per capita in the South, McKellar responds, "Of course the accuracy of [the claim that lynching is becoming more prevalent in the North] cannot be determined unless we have the relative figures as to the colored population" (*Congressional Record* 29 Nov. 1922 397). McKellar, like Caraway and the rhetors discussed in the previous section, insists on a shared understanding of lynching's purpose to a degree that inhibits deliberation.

Rhetors in both debates also make the dubious claim that the South is and always has been racially harmonious, and that all racial hatred is an invention of Northerners and black activists. These arguments are contradictory and, for most audiences, hard to

believe. But the internal logic does not matter within the standards of argument that lynching suggests; audiences should believe these claims, regardless of how incorrect they may appear. Additionally, the contradiction allows rhetors to say that lynching both is and is not connected to racial hatred and blame the North in both circumstances.

Drawing on lingering Southern anxieties about government intervention, many of these arguments insist that the South is resolving its racial issues and that further intervention will do more harm than good. This argument had been around for some time before either of these filibusters. For example, a 1900 article, reprinted in the *Columbus Enquirer-Sun*, states that Northerners should help rather than criticize the South because "public opinion is rapidly growing in the south in opposition to mob law…even in the most exasperating circumstances" ("Idle Moment"). But this claim is especially prominent in the Costigan-Wagner debate, perhaps because the rape justification was less widely accepted in the wake of increasing anti-lynching activism. Senator Hugo L. Black's (D-Alabama) argument is representative of the filibuster's common threads. Black argues that black Southerners do not want the legislation, and that its publicity is rather the work of individuals "who have gone over this land holding aloft the ancient torch of prejudice and passion and hate, thereby contributing no benefit to the people of their race; simply attempting to stir up an antagonism which does not exist between the white people of the South and the colored people of the South." He goes on:

> Is it right, is it fair, is it just to thousands of Negroes who do not feel disgraced when we mention the name of their race, but who, instead, have a feeling of pride that it is their race, is it right to them or is it right to us, who live there side by side…to enact legislation which drives a wedge between the races, following up the

> old idea of the men in charge of the Freedmen's Bureau and the others who traveled into the South in those dark and gloomy days of desolation and despair, lured by the hope of pecuniary profit to themselves? Is it fair to us at this time, when we are working in peace and harmony the one with the other, to do something which will bring about again the spread of the flame of race antagonism, and instill prejudices which, thank God! Have been stifled in the hearts of most of the people in Alabama and other States of the South? (*Congressional Record* 29 April 1935 6533)

Black's argument suggests not only that the South's racial antagonism is diminishing, but also that it has origins outside of the South. Black argues that Southerners' "prejudice, passion, and hate" are the result of either black activists or, in the latter part of the argument, Northern interlopers. His claim draws on lost cause mythology in its suggestion that the antebellum South was a racial utopia, but it also paints a confusing picture of Southerners as a whole. If lies and Northern intervention are the source of a racial hatred that would not exist otherwise, then both black and white Southerners ("most of the people in Alabama") are remarkably open to outside influence. In constructing the North as the source of all of the South's problems, Black erases some Southern autonomy.

The point of this erasure, however, is clear throughout the argument. Like the focus on "unfair" criticisms of the South, this part of Black's argument constructs Southerners as both victimized and powerful. Black's insistence that the South is racially harmonious is both an exercise of interpretive rights and a thinly-veiled threat. Black's argument suggests that agitators of various kinds are the source of racial hatred and, by extension, lynching, and the senators sponsoring the bill will encourage racial hatred and violence if

they threaten the Southern "way of life" with anti-lynching legislation. At various points, Black presents himself as if he were a friend to African Americans, but his insistence that anti-lynching legislation will do more harm than good has menacing undertones. Black alleges that he is trying to protect

> the members of the colored race…from measures which might react to their disadvantage, which will play upon prejudices which do not now exist there and which carry out the old idea that was poured into their minds immediately after the War between the States that there is hatred between the two races, we stand here ready, willing, and, I hope, able to protect them in the only way that we have ever before been able to protect them from this prejudice and this passion. (*Congressional Record* 29 April 1935 6534)

The implication, of course, is that anti-lynching legislation will cause lynching. It is not clear to what sort of protection Black is referring, since the South offered nothing of the sort. Within the context of his lost cause-oriented argument, the "protection" he describes could well be enslavement. Black's message, then, is consistent with the greater body of pro-lynching rhetoric in its claim that Southerners will react badly to being told what to do and that outsiders should accept their projections, however nonsensical, or risk causing violence.

Additionally strange, if not surprising, in Black's argument is his insistence that he knows what black Southerners want and, in particular, that anti-lynching law would somehow offend their dignity. Black's suggestion that anti-lynching measures "might react to [the] disadvantage" of black Southerners is obviously a threat, but by constructing anti-lynching law as an insult to blacks, Black also projects a belief in the

rape justification onto the black community. Black suggests that blacks who "have a feeling of pride" in their race will be dishonored by anti-lynching legislation. The implication is that the legislation will allow more crime and thus embarrass upstanding community members. Drawing again on lost cause paternalism and a utopian vision of slavery, the argument also implies that black Southerners are fine with the status quo in the South and would be ashamed or upset by the "fuss" that anti-lynching legislation would make. Black, then, not only reserves interpretive rights for white Southerners, but assumes the interpretive rights of black Southerners, insisting that he understands not just what is best for them, but what they want.

The way that these arguments insist on a separation of appearance and reality is particularly interesting in relation to the honor culture that they support. These rhetors argue that outsiders cannot accurately perceive racism, and, importantly, neither can some insiders. They insist that while some Southerners act based on racial hatred, that hatred is detached from the essence of Southernness because it was imported from the North. The broader implication, of course, is that only "true" Southerners can say what the South is like, and they can make claims that seem to contradict their behavior. As Senator John H. Bankhead (D-Alabama) says in the Costigan-Wagner debate:

> Why does the Senator from Colorado think he knows more about the race situation in the South than do those of us who live there? Does he impugn our sincerity in saying that we are friendly to the colored race; that we are opposed to mobs and to lynchings; that we are handling the situation; that we are making wonderful progress? Does he impugn our motives? He must recognize that we know more about the problem than does any man who lives a thousand miles away.

(*Congressional Record* 30 April 1935 6627)

Bankhead's argument constructs all non-Southerners' attempts to critique racial violence in the South as presumptuous and rude because they automatically lack the knowledge that all Southerners possess. Securing knowledge of the situation to geography reinforces the regional divisions that animate much of pro-lynching rhetoric.

Through this and the use of the rape justification, we can see the ways in which pro-lynching rhetoric enacts an epistemic injustice that mimics lynching's physical violence. This narrowing of interpretive rights, tied to both race and geography, eliminates the potential for debate. Claims and evidence do not matter because anyone not already aligned with the Southern Democrats has no right to speak on the issue.

I mentioned at the beginning of this chapter that lynching is constructed at the "other" of modern execution in several ways. As I will discuss in Chapter 2, the move from public hanging to private electrocution was motivated in part by a desire to differentiate state-sponsored execution from extralegal hanging. Because of this differentiation, much of the contemporary discourse on lynching, particularly the discourse centered on the lynchings photographs exhibited and published in *Without Sanctuary*, focuses on establishing lynching's normalcy. The point of this looking, as Sontag notes, is supposed to be that spectators finally "understand such atrocities not as the acts of 'barbarians' but as the reflection of a belief system, racism, that by defining one people as less human than another legitimates torture and murder . . . Maybe *this* is what most barbarians look like. (They look like everybody else.)" ("Regarding the Pain" 74). Understanding lynching is, in part, to understand that regular people commit acts of

horrible violence.

This chapter, too, attempts to highlight this normalcy, but with an emphasis on how lynching became "appropriate" violence for a large population. The lesson of looking at lynching photographs tends to be that people do bad things—that, like the torture photographs from Abu Ghraib, these photographs "are us" ("Regarding the Torture"). This chapter suggests that, while accepting lynching as a part of our penal history and public memory is essential, we can also learn a great deal by examining the rhetorical structures that made this violence acceptable, even essential, for such a large population. Through this engagement, we can see that lynching connects to the present not just in its racialized violence, but in the pro-lynching tropes that support it. Understanding the rhetorical mechanisms that sustain lynching can help us understand both its historical role and think more critically about its rhetorical place in contemporary discussions of violence.

Pro-lynching rhetoric reflected and expanded the claims that lynching made about standards of argument and the nature of punishment. If we view lynching as an epideictic argument, it lays out a rhetorical refusal, an insistence that Southerners do not need to listen to anyone and should treat all outsiders as hostile. This refusal manifests in pro-lynching arguments through the focus on reputation and the consistent reservation of interpretive rights. Pro-lynching rhetoric, then, allows individuals to participate in the Southern community that lynching defines even when lynching is not happening. Controlling the dominant narrative of lynching is essential, not just as a means of shutting down argument or giving Northerners an excuse for inaction. Instead, insisting on lynching's meaning reinforces the fragile white supremacist Southern identity of which

lynching is a performance. Like lynching, these arguments are less about engagement with the opposition than they are about performing and clarifying values for a like-minded audience.

Examining pro-lynching rhetoric in connection with lynching as an epideictic clarifies the way pro-lynching arguments operate and reveals tropes that are also relevant to the discussions of the death penalty and torture in Chapters 2 and 3. First, we see that pro-lynching arguments are more connected to reinforcing social identity than to demonstrating lynching's effectiveness as a purported means of crime control. This focus makes sense given that lynching, while framed as a punishment, functioned instead as a form of terrorism and a source of cultural meaning. However, this characteristic of pro-lynching rhetoric does not mean that lynching should not be considered within the realm of penal history. Rather, it suggests that we might approach other punishments, like the contemporary death penalty, with attention to their internal logic and both avowed and obscured purposes.

Second, pro-lynching rhetoric is exceedingly concerned with self-serving standards of decorum, in which even reasonable critique is offensive, both to Southerners and to alleged victims of rape. The rape justification is an assertion of interpretive rights and party loyalty, but it also takes the form of a mandate directed at outsiders. The insistence that any Northerner who would critique lynching must also critique rape or admit that similar crimes occur in his or her own state limits engagement by forcing opposing rhetors to adopt lynchers' position. These required admissions also provide multiple opportunities for lynchers to attack an opposing rhetor's character: he is either immoral because he does not care about rape victims, or a hypocrite because the crimes in his own

state are just as bad. Statements about what "outsiders" can and cannot say about an act of violence, especially which criticisms are "unfair" or "misinformed," also appear in the rhetoric discussed in Chapters 2 and 3. We will also see a parallel to the insistence on addressing victims of rape in the discussion of closure discourse in Chapter 2.

Third, addressing lynching and pro-lynching rhetoric this way highlights that lynching's physical violence does not happen in isolation. Of the violent practices discussed in this dissertation, lynching is the most "spectacular" in the traditional sense: it is a live performance, one that required spectators in order to make its white supremacist argument. But its violence does not end there. Even after the lynching is over, its violence repeats in subtle ways, manifesting in the cultural violence of self-serving standards of argument and denials of interpretive rights. This multimodality makes it especially important for us to note how we talk about violent practices to make sure that we are not replicating assumptions that facilitate violence.

That last point brings us to an anti-lynching argument that Senator Robert F. Wagner (R-New York) made before a subcommittee of the Committee on the Judiciary on behalf of his bill. Wagner's argument, which stops short of condemning the individuals responsible for lynching, illustrates the hazards of adopting, deliberately or not, the norms that underlie rhetorical acts of violence. While Wagner is emphatic about the horrors of lynching, he suggests that "the poisonous effects" of lynching affect not just the victim, his or her family, and the black community, but also the lynchers and spectators. He explains, "[T]here are thousands of people, swept into the current by the frenzy of the moment, who suffer a moral relapse from which recovery is almost impossible" (4).

According to Wagner, lynching defenders may not actually support the practice, but could, instead, be engaged in a sort of boosterism:

> A lynching is such a horrible strain upon the repute of a section that every effort is made to efface it. And the only method of effacement is apology. These apologies include a mass of dogmas, prejudices, and falsifications that exercise a pernicious effect upon the public welfare. It is a tragic spectacle to watch people who abhor lynching forced by the pressure of events to make extenuating pleas for the evil in their midst. (4)

Wagner's characterization of lynching defenders is telling. According to this argument, individuals who defend lynching are not guilty of any wrongdoing. Rather, concern for their region's reputation forces them to make arguments that they would not otherwise make: arguments that discourage federal intervention and downplay lynching's pervasiveness, racial motives, and/or general horror. In this argument, lynching defenders are victims of lynching as well because lynching forces them to use damaging rhetoric which then creates further problems for the general public. That Wagner does not explain what the "pernicious effect" of this rhetoric is means that he could be discussing the ways in which this rhetoric supports future racial violence, but he could also or instead be following abolitionist arguments and previous anti-lynching arguments by drawing attention to the moral damage that whites incur from supporting a violation of human rights. Within the context of this paragraph, it seems more likely that audiences would perceive the latter meaning. After all, Wagner describes watching people defend lynching as a "tragic spectacle," a phrase that could just as easily describe what happens to a lynching victim.

While it is possible that Wagner feels genuine sympathy for people involved in lynching, his position as an anti-lynching activist makes it likely that he is engaging in what Kenneth Burke calls "cunning identification." Burke suggests that a rhetor can align himself with the interests of a hostile audience, even as he critiques that interest, by "using terms not incisive enough to criticize [the interest] properly" (36). In other words, while Wagner criticizes lynching, he aligns himself with pro-lynching interests by accepting the rhetoric of misrepresentation and victimization prominent in pro-lynching rhetoric. In suggesting that the individuals defending lynching are only trying to support their region, Wagner implies that the "dogmas, prejudices, and falsifications" that appear in these lynching defenses are a secondary effect. The true purpose of lynching defenses is to help mitigate the damage that lynching does to the region's reputation, and the preservation of lynching is an unintended consequence. This argument is problematic because Wagner attempts to dissociate lynching and Southernness in a way that, however unfairly to anti-lynching Southerners, cannot be done. As we have seen, lynching and its supporting rhetoric helped reinforce a regional identity based on the violent practice of white supremacy. Wagner's argument falls short as anti-lynching rhetoric because he fundamentally misunderstands how lynching functions as a discourse. It incorrectly assumes that lynching is divorced from broader understandings of community and can therefore be dissociated from arguments that purport to be concerned about reputation.

If Wagner's argument is ultimately a failure, it was not the only one. While the annual lynching rate began to decrease after 1924, changing population patterns caused by the Great Migration likely played a significant role in the decline.

Public opinion did change—over time, due to the efforts of anti-lynching activists and

organization, lynching's primary public image shifted from a quaint Southern custom to a barbaric embarrassment— but not enough for the enactment of federal or even significant state-level anti-lynching legislation. Judged by this evidence, pro-lynching rhetoric was relatively successful in sustaining lynching as a means of social control and a source of group identity. The ease with which lynching's key values could be practiced, as well as their effectiveness in foreclosing debate, was likely a factor. Pro-lynching rhetoric made it impossible to talk to lynchers, so deliberation was out of the question. Additionally, racist beliefs could make Northerners accept, if not entirely approve of, Southern spectacle lynching. Even though the rape justification was not accurate, it would have felt accurate to many Northerners as well as Southerners.

Constructing the conversation around Southern identity allows pro-lynching rhetoric to shift the discussion of lynching away from actual violence. Pro-lynching interpretations function as shibboleths, distinguishing community members with a speech act and a specific understanding of violence, rather than the actual act of violence that is instrumental in forging Southern white supremacist identities. Through this method, pro-lynching rhetoric erases the violence even as it reinforces its message. It reproduces the power and rhetorical refusal implicit in the violence, but in discursive form. Importantly, it also erases the black bodies that are so instrumental to white supremacy, and so carefully fetishized in lynching's life performance. Within pro-lynching rhetoric, lynching is abstract and flexible, defined in whatever way Southerners see fit. This erasure, along with occasional ventriloquizing of the black community, reproduces the construction of blacks as tools with which white identity is formed.

By examining lynching as a discourse, we can see how the epideictic argument of

the live event extends into written and spoken rhetoric in ways that were either not obvious or not important to Wagner. Understanding this characteristic of lynching can help us better understand the complexities of modern rhetorical acts of violence, including how anti-violence rhetorics can reproduce or participate in them.

~2~

Obscurity, Emotion, and the Contemporary Death Penalty

During a debate between Republican presidential candidates on September 7th, 2011, moderator Brian Williams asked then-candidate and Texas governor Rick Perry the following question: "Your state has executed 234 death row inmates, more than any other governor in modern times. Have you struggled to sleep at night with the idea that any one of those might have been innocent?" In the midst of this question, after Williams stated that Perry had presided over more executions than any other modern governor, the crowd applauded (*The Telegraph*). Williams' question had an obvious referent: the 2004 execution of Cameron Todd Willingham, convicted of killing his children with a fire that experts eventually ruled accidental. Perry's controversial execution record received a fair amount of coverage prior to and during his candidacy, implying that this information could affect Perry's viability as a candidate. But in the coverage of the debate, no one seemed very surprised at the crowd's reaction. Glenn Greenwald wrote that the response was "hardly surprising for a country which long considered public hangings a form of entertainment." Dahlia Lithwick called the applause "just a reminder that public hangings, whippings, and drownings were chiefly seen as great sport in this country." Ta-Nehisi Coates took a similar stand, critiquing Republicans in particular, but also Americans as a whole. He wrote, "The only thing that shocked me was that they didn't form a rumba line. It's a Republican debate. And it's America . . . This is still the country where we took kids to see men lynched, and then posed for pictures. We are a lot of things, and this is one of them" ("Death Row Applause").

These critiques draw on common assumptions about the appropriate relationship between the general public and the death penalty. Greenwald, Lithwick, and Coates all suggest that community members are not supposed to enjoy the death penalty, and the death penalty's history, as well as much of contemporary pro-death penalty rhetoric, seems to support that claim. Many of the nineteenth- and twentieth-century changes to execution procedure have been geared toward minimizing spectacle in order to curtail the festive atmosphere that plagued public hangings. Nineteenth-century commentators on both sides of the debate lamented the crowd's perceived hard-heartedness and expressed concern that public execution would habituate lower-class viewers to violence.

The primary difference between these two sets of arguments is the contemporary rhetors' resignation. While nineteenth- and twentieth-century authorities changed execution procedure to encourage a more "appropriate" response, these later authors suggest that bloodthirst is inevitable as long as the death penalty is in use.

While concern about audience response is a longstanding feature of the death penalty debate, its use in contemporary death penalty abolitionist (hereafter "abolitionist") arguments raises questions about the death penalty's current operation. The above arguments classify the audience's enthusiasm as expected, but still inappropriate. As Greenwald explains, "[E]ven for those who believe in the death penalty, it should be a very somber and sober affair for the state, with regimented premeditation, to end the life of a human being . . . Wildly cheering the execution of human beings . . . is primitive, twisted, and base." In designating this enthusiasm as the wrong response, these rhetors take much of death penalty retentionist (hereafter "retentionist") rhetoric at its word. Much of retentionist rhetoric emphasizes the

importance of removing emotion from execution proceedings, and the design of execution as an event suggests disengagement, even for the witnesses. Even as these abolitionist rhetors express disgust at the crowd's enthusiasm, they uphold a standard understanding of the death penalty's goals. They simply suggest that those goals are unachievable because of inherent flaws in certain groups and/or the general public.

This intimation of a flawed audience draws attention away from the mechanics of contemporary execution. In comparing contemporary execution to public hanging and lynching, these rhetors claim that nothing can be done to "civilize" execution. In spite of the various "advancements" in execution technology, audiences still feel the enthusiasm that obscuring execution and eliminating its gore was supposed to discourage. But, even if audiences respond to contemporary execution with enthusiasm, it is reductive to assume that this enthusiasm comes solely from internal human deficits. Focusing on audience forecloses questions about what makes modern execution work in spite of, and perhaps because of, these restrictions on audience contact with the death penalty. Whatever contemporary execution communicates, it communicates under different circumstances than public execution, and those differences are key to understanding the death penalty's persistence.

In this chapter, I will examine the rhetoric of and around contemporary execution to determine how it defines the parameters of the citizen/execution relationship. With executions hidden, retentionist rhetoric suggests that individuals should form opinions about the death penalty based on consensus and specific forms of emotional engagement. The "right" reaction to an execution, according to retentionist rhetoric, is more complicated than the equivalence of public hanging spectators and death penalty

supporters would suggest. Together, retentionist rhetoric and execution procedure solicit both detachment and emotion, constructing the death penalty as an affirmation of shared knowledge rather than a social policy subject to critique or elimination based on its ineffectiveness.

Examining the death penalty as a spectacle allows for engagement with multiple points of contact between the institution and spectators. The spectacles discussed in this chapter draw on and complicate Wendy Hesford's concept of the "human rights spectacle." Hesford adapts a Debordian understanding of spectacle to define "human rights spectacle" as "not . . . individual images, iconic or otherwise, but . . . social and rhetorical processes of incorporation and recognition mediated by visual representation and the ocular epistemology that underwrites the discourse of human rights" (7). The texts that I will examine, most of which are in favor of the death penalty, do not fit within the spectrum of "human rights spectacle"; they have different goals, messages, and rhetorical processes. They are also not entirely or even mostly visual. But like the human rights spectacles that Hesford discusses, the death penalty operates across a variety of media and defines behaviors and attitudes associated with particular groups. And while execution itself is rarely visible, the contemporary death penalty's deliberate rejection of ocular epistemology is a key feature of the audience/death penalty relationship. The death penalty is a spectacle built around not seeing. Thus, rather than drawing clean parallels between the very different spectacles of public hanging and private lethal injection, this chapter will draw out the nuanced ways in which the death penalty and its surrounding rhetoric solicit varying levels of engagement and reactions from community members.

By focusing on retentionist rhetoric and the underlying logic of the death penalty,

this chapter attempts to approach the death penalty on its own terms. Examining the stakes and commitments that fuel retentionist arguments will help us better understand the role that this form of violence plays in public life. I will first discuss two major changes in execution procedure: execution's removal from the public eye and its construction as a "humane" non-event. Execution was re-designed in part to distinguish it from extralegal lynching, but the de-emphasis of the live text of execution mirrors the tendency of pro-lynching rhetoric to emphasize interpretation of violence as the center of identification, rather than the ritual of violence itself. I will then look to the rhetoric that supports the death penalty to examine the alternative means of understanding that this rhetoric offers in place of a devalued live text.

The Move to Obscurity

We can understand modern execution procedure as a response to the rhetorical problems of public hanging, the primary execution method in the colonies and the early United States. Of these rhetorical problems, publicness was perhaps the easiest to solve. Before the mid-nineteenth century, publicness was an essential part of execution procedure, and viewing an execution was not considered shameful. People from surrounding communities would travel to witness the often multi-hour ceremony, typically held in a venue that could accommodate a crowd. Executions served a pedagogical function. As Stephen John Hartnett explains, "physical punishments and the death penalty were employed as *public spectacles of seeing and knowing*, as means of drawing clear lines to demark values, identities, and the cost of transgressing community norms" (5). To reinforce these messages, hangings were typically accompanied by

gallows speeches, sermons, and/or pamphlets warning the spectators against a life of crime and its supposed precursors, like alcohol or idleness. That hanging was also a form of entertainment, and that the audience sometimes sided with the condemned, did not initially threaten the institution. The death penalty's didactic potential appeared to outweigh concerns that the crowds might get the wrong message (Banner 28).

The move to private executions was motivated in part by changing conceptions of what constituted appropriate viewing for civilized people. David Garland notes that men and women of taste were supposed to "draw back in disgust at the sight of vulgarity or unpleasantness, above all from scenes of violence or brutality"; he quotes John Stuart Mill's statement that "it is in avoiding the presence not only of actual pain, but of whatever suggests offensive or disagreeable ideas, that a great part of refinement consists" (*Peculiar Institution* 145). Hanging was frequently gory; sometimes the condemned died instantly and sometimes he or she strangled over the course of several minutes, and no one was sure how to guarantee the former instead of the latter (Banner 170). However, Banner notes that "[b]efore the last third of the nineteenth century, accounts of bungled or obviously painful executions contain no indication that spectators found them too troubling to bear" (172). New attitudes about violent spectacle complicated public execution. Given that civilized people were not supposed to see gore, it seemed increasingly unlikely that public execution would sway audiences in a moral direction. Elites began to worry that public executions were corrupting the poor and working class audience members—thought to be highly susceptible to negative influence—rather than persuading them to avoid crime. As a Massachusetts newspaper put it, "An hundred persons are made worse, where one is made better by a public

execution" (qtd. in Banner 150).

The easiest way to deal with the crowd's reaction was to eliminate the crowd. Authorities began began building walls around scaffolds, hiding hanging from the public, "as a means to impose efficiency, order, and the semblance of respectability" (Wood 23). The pool of witnesses was narrowed by race, gender, and class to avoid "any semblance of an unruly or impressionable crowd," and some states went so far as to ban press from the gallows to prevent sensationalism in the news (Wood 28). These actions suggest that the audience was considered a large part of the problem. While the text of execution would need modifications, limiting the audience to people who would interpret the event "correctly" would improve the death penalty's rhetorical effects. Presumably, the intention was that the observations of elite witnesses would be transmitted through newspapers and oral accounts to the larger population, thereby structuring the would-be crowd's understanding of the death penalty. Instead of experiencing the actual event, the masses would get the argument through an additional filter.

It would seem that limiting access in this way would eliminate much of the execution's communicative power. But modern execution still sends a message, in part through its obscurity. For the most part, no one asks for a return to traditional public executions—maybe because the public involved is too big to fit into a town square—but journalists and other interested parties sometimes ask to record executions. The first case to propose broadcasting an execution was *Garrett v. Estelle* (1978). Tony Garrett, a television news cameraman from Dallas, had petitioned the Texas Department of Corrections (TDOC) to allow him to tape for broadcast the state's first execution since the United States Supreme Court ended the *de facto* moratorium on the death penalty in

Gregg v. Georgia (Levi 145). The TDOC had denied this request based on their long-standing policy of keeping executions out of the public eye. While a district court ruled in Garrett's favor, the Fifth Circuit Court of Appeals overturned the lower court's decision on the grounds that Garrett's First Amendment rights as a journalist did not extend to the internal workings of a prison, because, as previously established in *Pell v. Procunier* (1974), "the protection which the first amendment provides to the news gathering process does not extend to matters not accessible to the public generally, such as filming of executions" (qtd. in *Garrett*). Importantly, the Court also repudiated Garrett's claim that forbidding recording tools denied him equal protection under the law, arguing that a video recording would provide no information not readily available in secondary sources:

> In order to sustain Garrett's argument we would have to find that the moving picture of the actual execution possessed some "content" beyond, for example, that possessed by a simulation of an execution. We discern no such quality from the record or from our inferences therein. Despite the unavailability of film of the actual execution the public can be fully informed; the free flow of ideas and information need not be inhibited. (*Garrett)*

The court's opinion, written by Judge Robert Ainsworth, is oddly contradictory. Legal scholar Austin Sarat critiques the court for its failure to acknowledge the significance of medium, and Sarat is correct in that the court insists that a person who sees a simulation of an execution, no matter how rudimentary, gets the same information as someone who sees a video (196). Importantly, though, while all of these representations are equivalent in content, public executions and videotaped executions are considered unacceptable. Ainsworth affirms the TDOC's statement that "televising an execution would be

tantamount to conducting a public execution," noting that the TDOC has a policy against public executions and should not be asked to violate it (*Garrett*). In other words, while all media deliver the same information, viewing in person and viewing remotely are both outside of what the law requires.

The contradictory threads in the court's argument imply that the difference between public execution and videotaped execution on the one hand and a written description or simulation on the other is quantitative rather than qualitative. The court's opinion does not explain what is wrong with public and broadcast executions; it only suggests that they are more than the audience can reasonably demand. The opinion, then, defines which parts of the text are necessary for public understanding. Specifically, the opinion devalues contemporaneous visual experience in favor of by proxy experience, thereby normalizing an understanding of execution as both public and not, an action by the people from which they are also always removed.

Later decisions suggest that dangerous misinterpretations of the text make it necessary to obscure execution. In *KQED v. Vasquez* (1991), in which a California television station sued for the right to record and broadcast an execution, presiding Judge Robert Schnacke echoes Ainsworth's claims about excess, He states that "[t]he right of a witness is simply to witness. It doesn't necessarily encompass the right to record in any other fashion than in the mind what is witnessed." Judge Schnacke even goes so far as to call journalists "aggressive" for requesting to broadcast an execution. But journalistic inappropriateness is only one element of the court's reasoning. The court's opinion also notes concerns about safety:

> some of the wardens had a real fear . . . that the circulation of a photograph of an

> execution within the prison even after the time of the execution, and more seriously the display on television of a live broadcast of the event within the prison, could spark severe prisoner reaction that might be dangerous to the safety of prison personnel.

The court's opinion in *Entertainment Network, Inc. (ENI) v. Lappin* (2001), in which a company petitioned for the right to broadcast Timothy McVeigh's execution over the Internet, cites similar concerns. The court's opinion cites the federal Bureau of Prisons' reasons for denying ENI'ss request:

> *[F]irst,* that to maintain security and good order in a prison setting, it is important that inmates understand and believe that they will be treated like human beings and not dehumanized; *second,* that the government's interests in not sensationalizing and preserving the solemnity of executions is based upon the danger that if prison inmates were to see the execution on television or receive word of the televised event through other means, the inmates may well see the execution as 'sport' which dehumanizes them; *third,* that when inmates feel that they are dehumanized or devalued as persons, agitation amongst the inmates is frequently fomented, which in turn can lead to prison disturbances; *fourth*, that a broadcast would violate the privacy of condemned persons and would also "strip away" the privacy and dignity of victims and families, and *fifth*, that "a public broadcast of the execution would violate the privacy and seriously put at risk the safety of those charged with implementing the sentence of death."

Of the five points listed, three are concerned with how prisoners will interpret a televised execution. The argument's core is the assertion that prisoners will get the wrong message

from a broadcast execution and will respond with violence. Importantly, the argument does not say that a public execution is inherently dehumanizing, although it does say that it would violate the condemned's privacy, as well as that of victims, families, and execution staff. For the most part, this argument is similar to the moral hygiene arguments that fueled the initial shift to private execution, albeit with a different outgroup. While these opinions do not indicate that there is anything wrong with execution, they do express concern that certain audience members will misinterpret the text. Like the suggestible nineteenth-century working class, prisoners are assumed to have uncontrollably bad reactions to the spectacle of execution. According to the Bureau of Prison's argument, prisoners' assumed violence would put prison staff in danger.

This rhetorical construction suggests that detailed knowledge of the live event is not important for prisoners or for the general public. This rhetoric thus constructs the execution itself as a sort of non-event, the opposite of the unsavory spectacle of public execution. While authorities viewed public execution as a failed lesson, obscured execution glosses over that failure by suggesting that there is nothing to be learned by watching an execution. These arguments deemphasize the live text and insist that the public's understanding of the death penalty should come from other sources.

Additionally, this rhetoric of obfuscation reinforces the dehumanization of prisoners that underpins the death penalty. In saddling the outgroup with this misinterpretation, these rhetors also establish a baseline of acceptance for the rest of the population. Just as pro-lynching rhetors implied that the failure to accept an interpretation of the death penalty was also a moral failing that made anti-lynching rhetors fundamentally untrustworthy, this judicial rhetoric suggests that prisoners' interpretive

abilities are so lacking that they need not even see the text to react violently. While nineteenth-century elites were specifically concerned about visual exposure and the atmosphere at the public execution, modern prisoners need only "receive word" that an execution is being televised in order to feel dehumanized and become violent. These rulings do not deal with the general public's reaction, likely for strategic reasons; government regulations on the content of speech are subject to strict scrutiny, the most stringent level of judicial review, so arguing that executions should be hidden because they might transmit anti-death penalty arguments would be problematic. In the absence of discussion of the general public's possible opinions, pushing the negative reaction onto prisoners implies that they are the only people who will react negatively. The rest of the population will be unaffected by the display. According to these arguments, only someone with an existing quarrel with the corrections system would object to execution proceedings, so there is no need to show them.

Live execution as a non-event

Changes in method minimize the spectacle of execution for the small group that witnesses executions, as well as for the general public, members of which can learn details of the proceedings through eyewitness accounts. Lethal injection, and electrocution before it, addresses much the same public image problem that the move to private executions addressed: execution seemed barbaric, and new methods were introduced to help minimize gore and maintain the dignity and legitimacy of the proceedings. While attention to method has long been a part of managing public opinion, it gained additional importance in the second half of the twentieth century, when

concerns about what constituted "cruel and unusual punishment" moved to the forefront in the wake of *Furman v. Georgia*. The Court held in *Furman* that the death penalty as it was administered at the time was unconstitutional, and the country was briefly without the death penalty as states reformed their capital statutes. Today, legal challenges to the death penalty are often concerned with proving that a method is fundamentally inhumane, and while these challenges have been largely unsuccessful, the death penalty's continued acceptability depends in part on having a reliably inoffensive method of execution.

What constitutes "inoffensive," however, is complicated, as the initial switch from public hanging to electrocution shows. Late nineteenth-century authorities expressed a desire to find a method "less barbarous" than hanging, but the details of their search indicate that painlessness was not an exclusive or even primary concern (*Peculiar Institution* 118). New York was the first state to adopt an alternative method of execution, and their selection committee's rejections show a concern for what proposed execution methods would communicate, both to and about the community members. Hanging, for example, was rejected in part because of its association with lynching. One committee member mentions that "cultured or high-minded persons" have a prejudice against execution based on "the multitudes of accounts which have been published of such scenes which have occurred, not necessarily associated with the death penalty" (qtd. in *Peculiar* 119). As I discussed in the previous chapter, incidents of Southern spectacle lynching increased dramatically in the 1880s, and lynchers adopted the rhetoric of punishment, even making use of "witnesses" and "confessions" before torturing and killing their victim. While these parallels may have afforded lynching more credibility, they caused problems for state-sponsored execution by associating hanging with

barbarism and lawlessness (*Peculiar* 118-119). The guillotine, while thought to be painless, had similarly problematic associations. The committee's report noted that the guillotine was associated "with the bloody scenes of the French Revolution" and that audiences would find it "totally repugnant to American ideas" (qtd. in Banner 180). The committee was also concerned about the audience's comfort, rejecting the guillotine in part because "the profuse effusion of blood which it involves . . . must be needlessly shocking to the necessary witnesses" (qtd. in 179). The firing squad, on the other hand, was rejected because it required too many executioners and had a "tendency to encourage the untaught populace to think lightly of firearms" (qtd. in 180). The ideal method of execution was not simply painless. Rather, it would make a positive argument about the community as a whole by teaching important lessons and demonstrating the state's ability to conduct an execution without traumatizing audience members.

Debates about modern execution methods show similar concerns. Criticism of electrocution frequently cited its unnecessary visual horror. Nebraska Supreme Court Justice William Connolly called electrocution "unnecessarily cruel in its purposeless infliction of physical violence and mutilation of the prisoner's body," and Former United States Supreme Court Justice William Brennan noted, among other things, that "[t]he force of the electrical current is so powerful that the prisoner's eyeballs sometimes pop out" (Liptack, Worthington). The degree of horror involved in witnessing an electrocution was a key part of arguments against it. Prison authorities have raised similar concerns about the comparatively small risk of bodily disorder associated with lethal injection. In *Baze v. Rees* (2008), the United States Supreme Court ruled that Kentucky could not be compelled to change to a new, possibly less painful execution procedure, in

part because of the state's interest in "preserving the dignity" of the procedure. The proposed single-drug lethal injection protocol produces convulsion more frequently than the three-drug protocol, and the Court ruled that the state did not have to change methods if the new method might give audiences the impression that lethal injection is painful (*Baze*).

The persistent focus on whether execution *appears* painful can be explained not just by beliefs about appropriate viewing and civilized violence, but also by the dominant understandings of pain I discussed in the introduction to this dissertation. Timothy Kaufman-Osborn argues that execution procedure has been built around what he labels a modernist construction of pain, in which pain is understood as prior and antithetical to language (Kaufman-Osborn 137-141). Elaine Scarry's *The Body in Pain* details this dominant perspective. She argues that observers cannot process another's pain without visual cues, like a wound or a weapon, through which they can imagine the subject's internal state.According to this understanding, viewers will assume that anything that does not appear painful is painless.

When seen in relation to these understandings of pain, lethal injection is the most successful method of execution. While the electric chair, hanging's eventual replacement, was visibly brutal from its first use, lethal injection minimizes bodily disorder and thus indicators of pain. The execution team delivers the drugs through an IV, often from a separate room, so the audience sees only an individual, strapped to a gurney, often appearing to fall asleep. Even a "botched" lethal injection is far more visually innocuous than a botched electrocution or hanging. While the execution team may have trouble finding a usable vein, causing distress for the condemned and the audience, the

condemned's head does not catch on fire, nor is he decapitated. Typically, the condemned does not even convulse, or convulses minimally. The process is "remarkably subtle," thereby eliminating much of what an audience could perceive as painful ("Witnesses Describe"). As Florida Department of Corrections spokesperson C.J. Drake stated, "The point [of lethal injection procedure] is to make what you see as uneventful as possible" (qtd. in Kaufman-Osborn 179).

While lethal injection masks any pain that the condemned may experience, it still transmits a message about force. Much of lethal injection's imagery parallels that of dying of natural causes in a hospital bed, but there is an important difference: the prisoner is strapped to the gurney, so audience members have a constant visual reminder that the prisoner is there against his or her will. In addition to the practical reasons for restraining the condemned, these restraints send a message, especially in conjunction with the non-spectacle of the condemned's death. First, the straps help to distance the audience from the condemned. They remind the audience that the condemned is presumed dangerous, even in his or her last moments. Additionally, the straps constitute a show of force without a clear agent, which helps alleviate responsibility. This model of force contrasts with the violence for which the condemned was sentenced to die. While the medicalized atmosphere of the execution may make it more difficult to connect the crime to the punishment, the erasure of all other agency suggests that the condemned is the only one responsible for his or her fate. The straps thus reinforce state and/or community power without attributing responsibility to anyone but the person being executed. The execution is an act of the people, but for which the condemned is solely responsible.

The dual obfuscation in this spectacle—of the event itself and of public

responsibility—makes an argument about the appropriate relationship between individual and execution. Like the execution's obfuscation and its surrounding rhetoric, the construction of this non-spectacle suggests that individuals should feel detached from the event. While executions must have witnesses to be considered legal, the clinical display suggests a "justice" separate from personal investment. Individual reactions to the execution will vary widely, especially given that many witnesses will have some involvement with the condemned, but the event is designed to provide a stark contrast to the unbridled enthusiasm associated with lynching and public hanging. If there is any emotion that this display solicits, it is disdain for the condemned, which is consistent with broader rhetorics of capital punishment.

Common sense and dismissal of statistics

The construction of contemporary execution as a non-event suggests that audiences should not look to execution for information about the death penalty. Largely detached from public responsibility and hidden from most audiences, execution is constructed as mechanical, a process set in motion by the condemned's actions, the conclusion of which is unimportant. The ideal "spectator" for contemporary execution, then, is unemotional and uninvolved. Much of pro-death penalty rhetoric, however, suggests that community members can and should be invested in the death penalty as a whole. These arguments reinforce understandings of execution as a communal action by implying that community members need only look to their own beliefs and those of the community in order to make decisions about the death penalty. According to these arguments, other sources of data cannot provide the same quality of information.

Retentionist rhetoric's emphasis on "common sense" is most visible in arguments about deterrence. The death penalty is supposed to be a form of marginal deterrence: someone who is already committing a felony will choose not to bring a gun or kill a witness because of the threat of the death penalty. The research on this topic, however, is inconclusive at best. The National Research Council's Committee on Law and Justice reported that existing research on deterrence and the death penalty "is not informative about whether capital punishment decreases, increases, or has no effect on homicide rates" (2). The committee points out two major issues with the existing research: the failure to account for noncapital sanctions, and the use of "incomplete or implausible models of potential murderers' perceptions of and response to . . . capital punishment" (2). The report notes that such an estimate is tricky even for a trained researcher, especially given that "only 15 percent of people who have been sentenced to death since 1976 have actually been executed" (5).

Research on human behavior suggests that the death penalty's infrequent application significantly limits its deterrent potential. A report by The Sentencing Project points out that criminals are more likely to be deterred by the certainty of punishment than by increased severity (Wright 1). Additionally, deterrence requires that offenders be aware of the potential sanctions for their actions and capable of making a rational choice at the moment of the potential crime. Neither of these conditions is likely; Wright points out that "the general public tends to underestimate the severity of sanctions generally imposed," and that many offenders (half of those in state prisons) are under the influence of drugs or alcohol at the times of their crimes, making them less capable of rational decision making (3-4). To deter crime, the death penalty would need to be a constant

cultural presence and a virtual certainty for offenders. In its current form, it is neither.

With this evidence, it seems as if abolitionist arguments disputing the death penalty's deterrent effect would be hard to refute. Deterrence, however, remains a prominent thread in retentionist rhetoric, largely because rhetors suggest that the existing research is inadequate. There are several representatives examples in the debate over the repeal of the death penalty in Connecticut. The repeal, signed into law in 2012, replaced Connecticut's death penalty with life without the possibility of parole. Arguing against the repeal, State Representative John Hetherington says,

> I know we've been through study after study, and so forth, but we will not — we do not know. We absolutely do not know how many robbers have — how many criminals taking advantage of a robbery will not take a weapon — or if they do, will in a split second before it's too late, not pull the trigger. (Connecticut General Assembly)

Hetherington fails to acknowledge that one body of scholarship on deterrence is more widely accepted and methodologically sound than the other, instead claiming that all research on deterrence is inadequate. Additionally, the argument assumes that some level of deterrence must exist. While "we do not know how many" people have been deterred, Hetherington suggests that he and his audience know that the death penalty has some deterrent effect, even if existing research cannot quantify it. Other representatives make similar claims. Representative Arthur O'Neill states, "There's no way of knowing how many people in their heads made—went through that calculation and came to the conclusion that they would not commit one more crime, one more murder, because they were afraid of that possibility of the death penalty" (Connecticut General Assembly).

Representative John Shaban recounts a conversation with Barry Scheck of the Innocence Project. Shaban asked Scheck if a criminal's choice to "not [take] the gun to this liquor store holdup," or not "get involved because there could be a gunfight with the cop" would show up in statistics, even if it happened five or ten times; according to Shaban, Scheck said no. Shaban points out that even an abolitionist has to acknowledge a gap in the data (Connecticut General Assembly).

The implication is not that the deterrence question is unanswerable, even though that is ostensibly what these rhetors argue. These arguments suggest that there is no need for empirical evidence for deterrence because the answer is common sense. An editorial on California's proposed death penalty repeal by former judge and state prosecutor James A. Ardaiz provides little evidence for deterrence other than Ardaiz's own experience. Ardaiz bases his argument on the death penalty's deterrent effect, but he acknowledges that not everyone would agree with his reasoning:

> We have no way of knowing for certain, of course, how many people are not murdered because of the existence of the death penalty, and there have been studies that concluded the death penalty had no deterrent effect, but I don't find them convincing.
>
> Why? In part because of what I saw over a long career. In cases of premeditated murder, considerable planning often goes into the act, and that planning can include the weighing of what is to be gained against the potential penalties. Any penalty can have some deterrent effect, but the more severe the penalty, the greater the disincentive to commit the crime.

Ardaiz's argument makes explicit the foundation of most deterrence arguments: the belief

that, as Paul Heroux explains, "all negative outcomes deter some . . . The death penalty, the most severe of criminal sanctions, is the least likely of all criminal sanctions to violate that truism." The "common sense" in Ardaiz's argument and others like it is connected to the broader worldview that George Lakoff calls "Strict Father Morality." Individuals who subscribe to this worldview believe that people will only learn self-discipline if they have been disciplined for prior infractions. If a community wants its members to obey the rules, then, they have to punish any infractions so that would-be offenders will eventually learn to police themselves. Adherents to this worldview would be more likely to accept Ardaiz's rejection of evidence. Ardaiz mentions that there are that studies that support his claim and studies that do not, but ultimately indicates that none of that scholarship is as informative as his personal experience. His argument is an appeal to authority. He implies that anyone with exposure to the criminal justice system would come to the same conclusion, so scholarship on the issue does not matter.

United States Supreme Court Justice Antonin Scalia uses a similar appeal in his concurring opinion in *Baze v. Rees*. Scalia's opinion responds largely to that of Justice John Paul Stevens, who argues in this concurring opinion that "[i]n the absence of [evidence of deterrence], deterrence cannot serve as sufficient penological justification for this uniquely severe and irrevocable punishment." Stevens is critical of the means by which states assess the death penalty's effectiveness, arguing that death penalty retention is more often "the product of habit and inattention rather than an acceptable deliberative process." Like the above rhetors, Scalia mentions scholars who have found evidence of a deterrent effect, but ultimately suggests that common sense should be at the core of death penalty decision making and that most Americans share an understanding that elitist

Stevens cannot have. Scalia states that the Court should not "demand that state legislatures support their criminal sanctions with foolproof empirical studies, rather than commonsense predictions about criminal behavior." Scalia also skewers Stevens for valuing his own "common sense" over the beliefs of Congress, state legislatures, and the American people. He notes that, "The experience of fellow citizens who support the death penalty is described, with only the most thinly veiled condemnation, as stemming from a 'thirst for vengeance.'"

Scalia's argument suggests that abolitionists are inherently elitist, a position that has roots in the death penalty's recent history. David Garland explains that *Furman v. Georgia'*s *de facto* moratorium on the death penalty mobilized pro-death penalty conservatives "for the first time in US history" (*Peculiar Institution* 233). The immediate and strong backlash against the court's decision "was part of a wider backlash against civil rights, against Great Society liberalism, against the permissiveness and disorder of the 1960s, and against the elite-led, countermajoritarian power that liberals had wielded via the court" (233). Death penalty support was a key part of the so-called Southern Strategy, in which Republicans appealed to Southern voters by transforming white supremacist rhetoric into a focus on "crime" and "states' rights," among other issues. Southern states, which were the first to revise their death penalty statutes and reinstate the death penalty after *Furman*'s ban, were yet again resentful of being told what to do by federal officials whose circumstances seemed detached from their own. Republican rhetoric at this time drew on this anger and racialized fear of crime to transform death penalty support into "a symbolic badge" that showed support for the "silent majority" that elite Democrats were supposedly leaving behind (242, 244). Scalia's position

invokes this construction of the death penalty as a deeply democratic institution, a battleground on which "regular" people can assert their independence from distant, elite control.

Scalia makes this claim explicit when he contests Justice Souter's dissenting opinion in *Kansas v. Marsh* (2006). Souter suggests that innocence claims should affect the Court's approach to the death penalty, arguing that "[w]e are thus in a new period of empirical argument about how 'death is different.'" After suggesting that Souter's anti-death penalty beliefs are inappropriately influencing his judgment, Scalia responds that

> The American people have determined that the good to be derived from capital punishment—in deterrence, and perhaps most of all in the meting out of condign justice for horrible crimes—outweighs the risk of error. It is no proper part of the business of the Court, or of its Justices, to second-guess that judgment, much less to impugn it before the world, and less still to frustrate it by imposing judicially invented obstacles to its execution.

Here, "common sense" is consensus; the death penalty is unimpeachable because the majority of Americans approve of it. Scalia ties death penalty support to a shared knowledge and democracy. This appeal to consensus implies that the conversation is over, and that any attempt to contest the death penalty is not a conversation, but an insult to the American majority.

While less extreme, this argument mirrors much of the pro-lynching rhetoric discussed in Chapter 1. Scalia suggests that all critiques of the American majority's position on the death penalty are offensive. He even references the country's reputation, arguing that Justices who denounce the death penalty disrespect the American people

"before the world," filled as it is with judgmental, abolitionist European countries. By prioritizing the country's reputation, Scalia ties the retentionist position to "real" Americanness and to a rhetorical refusal, similar to that of pro-lynching rhetoric.

This reliance on common sense and rejection of other forms of evidence makes the death penalty more difficult to contest. Abolitionist rhetors often try to separate the death penalty from its emotional resonances to argue that this is a social policy that does not achieve its intended goals, especially deterrence. But by appealing to a particular common sense understanding of criminality, one that has its own emotional resonances, these arguments reject the evidence that abolitionist rhetors could use to argue that the death penalty does not work. According to these arguments, Americans only have to *believe* that the death penalty deters crime, and that belief is very appealing. Representative O'Neill dismisses arguments about error in capital proceedings by saying, "We will never have a completely perfect system of justice, but if we repeal the death penalty going forward, then we will not be able to deter those people who would only be deterred by that threat" (Connecticut General Assembly). This argument clearly draws on fear, but also inspires some confidence. While terrible criminals exist, the death penalty enables communities to do something to keep themselves safe. This construction makes crime a comprehensible problem with an easy solution—more/stronger punishment—and it draws on beliefs about human behavior that audience members may already have.

These appeals to common sense are an interesting contrast to the demophobic rhetoric that removed execution from the public eye. As I noted above, state authorities' seemingly sudden objections to hanging were tied to conceptions of taste, class, and the crowd. Stuart Banner notes that, by the early nineteenth century, "elite perceptions of

mass gatherings shifted. The crowd came to be seen as an unruly, threatening mob" (130). Executions moved indoors because elites felt that the masses could not be trusted to understand and properly react to the death penalty. Contemporary arguments that construct the death penalty as a populist policy reverse this polarity, but rely on similar ingroup/outgroup distinctions. Just as nineteenth-century elites were supposed to know instinctively what was tasteful or appropriate, "ordinary" people in the twenty-first-century are supposed to trust their gut instincts when making death penalty decisions. In both cases, an emphasis on internal modes of knowing masks the social pressures and cultural norms that inform understandings of taste, justice, and appropriate violence.

Emotional Knowledge

Retentionist rhetoric also encourages audience engagement through appeals to anger and fear. Like the arguments discussed in the previous section, these arguments rely on a fiction of empowerment, suggesting that individuals rely on their own feelings about the death penalty, but normalizing only the desire for revenge. Emotional appeals also come into conflict with the common retentionist and abolitionist claim that death penalty decisions should be detached from the decision-maker's feelings about the crime or the condemned. A lack of emotion is supposed to be part of what differentiates the contemporary death penalty from the violence it punishes and from legal and extralegal public hangings. But, rather than disrupting this binary, retentionist rhetoric's appeals to and disavowals of anger construct the death penalty as a more civilized alternative to the community's still-reasonable violent preferences.

We can see some of the complications in this rhetoric in the discussion of

retribution and vengeance. In the debate over Connecticut's death penalty repeal, Connecticut State Representative Cafero describes the difference between the two concepts:

> Vengeance is an emotion. Government does not have the luxury of having emotions, whether that be compassion or vengeance. Government has to seek justice. Justice is the core definition behind retribution. I am for the Connecticut death penalty because it is retribution which accomplishes justice…I am not for the Connecticut death penalty because it is revenge. Oh, we have those emotions. We hear details of these heinous crimes and our blood boils. Our thoughts sometimes get away with us of what we would do to those individuals, but we don't have that luxury collectively. (Connecticut General Assembly)

The revenge/retribution distinction is an important means of separating state-sponsored execution from individual and mob violence. Cafero's definitions follow the typical boundaries of this distinction. Cafero suggests that vengeance is personal and emotional, producing personal satisfaction rather than "justice." Retribution, on the other hand, is "justice," dispensed by the government, and detached from feelings of anger or compassion. According to Cafero, the community restrains itself in order to achieve "justice" through retribution rather than vigilantism, but that restraint is not always easy. Cafero describes the desire for vengeance in a sensuous way; the audience is a communal body with boiling blood that fantasizes about physical harm ("what we would do to those individuals"). This description universalizes and naturalizes the desire for violence, and seems to solicit it in the listener. Even as Cafero praises retribution as a civilized response to crime, Cafero's vivid language encourages the audience to imagine their own

responses to horrific crimes and make decisions about the death penalty accordingly.

Writing in defense of the death penalty, Louis Pojman makes a similar claim. He writes, "Our natural instinct is for *vengeance*, but civilization demands that we restrain our anger and go through a legal process . . . The death penalty is supposed by our gut animal instincts as well as our sense of justice as desert" (58). Pojman's narrative fits with the understanding in Strict Father Morality that, left to their own devices, humans would be self-serving and animalistic. But neither Pojman nor Cafero condemns these instincts in this context. The retributive frame allows for these violent desires, as long as the community is restrained. Their restraint can even function as a marker of their superiority, reinforcing the assumed difference between criminals and non-criminals. Emphasizing the community's desire for violence makes the death penalty merciful by default. If the community feels vengeful, then lethal injection is an inherently imperfect, inadequate response. The resignation associated with this rhetoric lowers expectations for what execution can accomplish, but still retains it as the best possible solution.

While this rhetoric draws an implicit distinction between informal vigilante violence and restrained processes of "justice," the restraint that Cafero and Pojman describe intersects with the rhetoric of tolerance as it appeared in pro-lynching rhetoric. As I discussed in the previous chapter, lynching defenders often claimed that lynchers were good men who were pushed beyond the bounds of tolerance by the rape of a white woman. Within both lynching and death penalty rhetoric, this construction of the put-upon community breaking under the strain of intolerable violence actually suggests the community's power. The rhetoric of tolerance ostensibly implies a generosity of spirit, but it reinforces inequality by indicating who has the power to define what is tolerable

(Brown 25). The death penalty rhetoric above suggests that community members restrain themselves even though some crimes threaten to push them beyond the bounds of civilized behavior. Naturalizing this desire for revenge can alleviate the community's responsibility, particularly when rhetors emphasize that certain crimes deserve greater punishment than the law allows. State Representative Perillo explains, "[S]ome of us might feel that death should be cruel and unusual . . . not for revenge, cruel and unusual for retribution, because let's be honest with ourselves here, the crime was indeed cruel and unusual" (Connecticut General Assembly). While death row inmates are much more likely to have committed the crimes for which they are condemned than lynching victims, the deflection of responsibility in this rhetoric is similar. In this retributive worldview, the crime is the source of the punishment, and the community responds to it in the most civilized way they can.

Other rhetors more explicitly normalize the desire for vengeance, asking audience members to draw on real or hypothetical feelings of rage or fear to make a decision about the death penalty. Virtually every representative who speaks against Connecticut's repeal describes or references a capital crime in recent memory, usually the murders of Jennifer Hawke-Petit and her daughters.

An excerpt from Representative Christopher Davis' statement:

> I can only think to myself that if my wife or my mother or any other family member or close friend was kidnapped or held hostage, secured to a bed, raped, sodomized and then left to die an agonizing death through inhalation of smoke, as the children of the Petits did that day. I'd say to myself I would want nothing less than the retribution of equal and swift death of that murderer.

> And this debate shouldn't be about emotions as our fine leader — Minority Leader mentioned earlier. It may not be about revenge. It's about retribution. (Connecticut General Assembly)

The disjuncture in this argument illustrates some of the issues with the separation of emotion from capital proceedings. The first section uses a vivid hypothetical, designed to draw out the audience's emotions. In recounting his thought process, Davis asks his audience members to consider how they would react if equally horrifying things happened to their families. Davis suggests that sympathetic imagining is a key part of his position on the repeal. To make a decision about the death penalty, Davis put himself in the victims' shoes, and his use of vivid imagery puts the audience in that position as well, suggesting that they too might imagine the horrors of this crime. While Davis quickly disavows the role of emotions in death penalty decision-making, the implication in his and other arguments is clear. Arguments that focus on victims' pain and the grotesque crime make the death penalty personal in a way that could be very convincing, but that also requires disavowal to fit with other threads in death penalty rhetoric.

Cafero also claims that logic is inadequate for making a decision about the death penalty in Connecticut. Following up on his assertion, cited above, that government must make decisions that are detached from emotion, Cafero goes on to suggest that such detachment is not always possible or desirable. Referencing earlier death penalty debates, Cafero notes that "sometimes the facts [of capital crimes] were so haunting . . . You would conjure visions of, God forbid, if that happened to my family. What is your raw emotion?" (Connecticut General Assembly). He goes on to ask, "How can you say in your heart and with your vote that it should no longer be the policy of the State of

Connecticut to commit anyone to death?" (Connecticut General Assembly). While Cafero twice reinforces that the government cannot make decisions based on emotions, his arguments appeals to both emotions and a broader "common sense." This section of his argument suggests that the death penalty can only be considered as a moral issue, and, on that basis, it does not make sense to abolish the death penalty but retain death sentences for the eleven inmates on Connecticut's death row, as was proposed in the bill. This portion of Cafero's argument seems as if it would lead to a claim for retroactive abolition, in which the current death row inmates would also receive commuted sentences, but Cafero normalizes only the retributive moral standard. He claims that Connecticut should retain the death penalty because the state has already decided that these 11 men deserve it, and if they deserve it, then it is unfair to say that similar future offenders do not.

The difficulty involved in separating emotions and the death penalty makes sense given the integral part that emotion, especially the largely subjective realm of psychological pain, plays in capital proceedings. Retribution arguments are claims about moral proportion: certain criminals deserve or even require the death penalty because their crimes are so horrendous. While post-*Furman* restrictions on what constitutes a capital offense eliminate some discretion in sentencing, the penalty phase of a trial specifically asks jurors to weigh a crime's aggravating factors, including the emotional toll on victims as expressed in victim impact statements, against any mitigating factors that might diminish the convicted person's responsibility. These proceedings ask jurors to decide which party is more emotionally persuasive—essentially, which party's pain is more significant. Jennifer Culbert suggests that, in allowing victim impact statements, the United States Supreme Court positions victims' pain and suffering as a "self-evident

truth" "that grounds the law." It is through this understanding of pain that the Court can justify including what could otherwise be considered unfairly prejudicial and/or outside the scope of the proceedings (95-96). But even beyond the role of victim impact statements, there is a strong component of emotional identification in the penalty phase of many trial proceedings. Even if there is no victim impact statement, there is always a victim, and there is always the question: is what this person allegedly did to the victim enough to justify the death penalty? Answering this question often requires considering the relative horrors of various acts of violence and the relative goodness of victims, and those are considerations grounded, at least in part, in personal values and feelings.

The representatives' persistent encouragement of audience members to imagine how they might feel if their families were raped and murdered draws on this legal grounding in the experience of the victims and survivors, but also erases the victim by normalizing only anger and the desire for revenge. The insistence that victims' families must want their loved one's killer to be executed draws on common understandings of the death penalty as a source of "closure." This rhetoric projects the retributive ideal onto these survivors, assuming that execution is the only way to balance the moral scales and enable them to continue their lives. As Representative Butler argues, "don't for a moment think that just because this goes away and people will be locked up they'll [sic] be closure. There's victims that said that, okay, now these people won't be glorified. Let me tell you, just knowing somebody is locked up in some facility somewhere isn't going to bring any closure for a lot of people" (Connecticut General Assembly). Butler acknowledges variation in victim response, noting that some victims express concern about death row inmates gaining celebrity status, but prioritizes those victims for whom

life imprisonment is not enough. Testimony from victims' families is widely available, including in the public hearings that preceded the debate on the Connecticut death penalty repeal, and it indicates a wide range of complicated reactions. As Equal Justice USA explains, the death penalty can inhibit closure because appeals can stretch out over years and require additional involvement from the victims' family. But much of this rhetoric does not acknowledge those complications. Instead, it suggests that solving the problem of grief is straightforward and consistent among victims.

Like the arguments in the previous section, these appeals to an imagined version of victimhood are appeals to a sort of "common sense." While individuals who have never lost a friend or family member to violence might not know what they would want in those circumstances, closure rhetoric appeals to the common sense belief that they would want to hurt the perpetrator. For many audiences, that assumed reaction would likely feel natural, especially if they ascribe to or have frequent contact with a retributive worldview. Actual grief is more complicated, and, in failing to acknowledge that, these rhetors both reinforce and undermine the place of victims' families in capital proceedings. While this punishment is ostensibly for the victim, much of this rhetoric suggests that execution is more about an idea of victimhood and quantifiable grief than about actual emotions and experiences of survivors.

This imaginative identification can also be somewhat lurid, mirroring the graphic descriptions of rapes and murders that often accompanied lynching coverage in Southern newspapers. The Connecticut debate contains several graphic descriptions of crimes, including more than one description of the Petit murders. In addition to Davis' description, cited above, Representative Adinolfi provides an extremely detailed

description of the Petit murders, only part of which I will cite here. He notes that "Dr. Petit was tied up, battered with a baseball bat, split his head open . . . with the girls tied to the bed and the mother dead, they poured gasoline over them and lit them and they burnt . . . Michaela, the 11-year-old that was raped and tied to the bed, was ashes on the bed" (Connecticut General Assembly). Cafero's description of the death row inmate who "crushed [a boy's] skull" is similarly vivid (Connecticut General Assembly). These descriptions are certainly appeals to fear and disgust, designed to illustrate that some crimes are so horrible that they require the death penalty. But the level of detail, especially in the repeated invocation of the Petit murders, also seems to draw on the grotesque titillation of imagined victimhood. As Lundberg notes, imagined victimhood can be pleasurable when it is constitutive of a community bound by its perceived persecution by outsiders (400). In this case, retentionist rhetors attempt to construct such a community that, like the Southern community constructed by lynchers, maintains a dual status that is both victimized and empowered. These arguments suggest that, while "bad" people will always target "good" people, that victimization is a part of being on the right side, and there are strategies, like the death penalty, available to combat these threats when necessary.

As I noted above, Connecticut's death penalty repeal was not retroactive, so the specific crimes mentioned in the debate serve as only examples of possible future horrors. The audience is asked to imagine these crimes in part to identify with victims and their families, but also to evoke fear of the inevitable similar crimes that cannot be deterred without the death penalty. As Cafero argues, "unfortunately the way life is there might be another Petit-type case and, God forbid, as gruesome, as horrible, as horrific, as

deplorable as that very case, we can't conjure it in our minds now" (Connecticut General Assembly). Like retentionist claims about deterrence, this argument turns uncertainty into certainty. While Cafero acknowledges that his audience cannot yet imagine the next horrible crime, he assumes a shared understanding that there will be more crimes for which, as Cafero repeatedly insists, the death penalty is the only appropriate response. Faced with these previously unimaginable horrors, we cannot imagine how horrible the next crime will be, or, according to some of these rhetors' slippery slope arguments, how lax the penalty. Representative Fitz describes a world in which death penalty abolition has improperly skewed legislators' understandings of appropriate punishment. She speculates that "a heinous crime, similar to the Petits," might get 25 years (Connecticut General Assembly). Fitz's argument suggests that there is only one correct understanding of justice, and abolishing the death penalty will create a world in which this form of justice is unattainable.

These appeals to fear and uncertainty also appear in the representatives' discussions of the new administrative custody in which would-be death row inmates would spend the rest of their lives. This high-security custody would, among other restrictions, permit inmates no more than two hours per day outside of their cells and no physical contact during social visits. A proposed amendment, which would retain the death penalty for inmates who "[kill] an employee or a contractor of the Department of Corrections" suggests that this confinement is inadequate because it cannot account for inevitable violence, in spite of its above-average restrictions on prisoner movement. Representatives' concerns about the administrative custody combine appeals to fear and to the common sense belief in deterrence. Representative Adinolfi asks, "What do we do

if somebody in prison who has nothing to lose now, he's in prison for life without the possibility of parole, kills a correction officer? What penalty does he face? And I can assure you it's probably going to happen, because they don't have any penalty to face" (Connecticut General Assembly). Like Fitz, Adinolfi is sure without being sure. While Adinolfi cannot guarantee that removing the death penalty will have this effect, he relies on the belief in an unsafe world to assure his audience that future violence is both unpredictable and certain.

The representatives' barrage of questions about this custody also suggests retributive concerns about this special administrative status. The representatives' arguments appeal to audience members' assumed sympathy for victims to argue that anything but execution is not enough. Recounting the aforementioned story of a death row inmate who beat a 13-year-old boy with a sledgehammer, Cafero states, "I would assume, maybe, some of his family are waiting for justice, and it might seem unfair to them if the very person who did that to their son, whether it's two minutes or two hours a day, gets to breathe that fresh air and see that sky and interact with family that their 13-year-old boy never got to do again" (Connecticut General Assembly). In appealing to sympathy for the victim's family, Cafero calls for a retributive justice that he claims only the death penalty can provide. Cafero claims that even minimal human contact will makes life without parole in special administrative custody too lax for the worst offenders. As David R. Dow notes, life without parole with these restrictions is a "different death sentence," one that could just as easily be considered inhumane. But the death penalty as it is constructed here has a surplus emotional value, projected onto victims' families. Rather than just balancing the scales for the community, the death

penalty heals emotional wounds that even harsh non-capital sanctions cannot touch. This construction allows for the circulation of emotion that is supposedly detached from the speaker, but clearly intended to inform the audience's decision.

The retributive worldview on which these arguments rely is not free of emotion because determining moral proportion in this context requires a level of emotional engagement. But soliciting and disavowing emotions like anger and fear allows rhetors to deflect responsibility from the community while maintaining attitudes that perpetuate violence. Audience members are asked to make a decision about the death penalty based on feelings they think they might have in horrible circumstances *and* told that such emotions are separate from the death penalty's operation. In these arguments, the death penalty is constructed as inadequate to serve the community's emotional needs. The use of the death penalty, then, is a sacrifice for the community, ennobling its members because they chose not to follow their supposed desires for torture and spectacle. In this construction, the death penalty is not an extreme social policy, but rather a mercy, a mark of civilized restraint.

The death penalty rhetoric discussed in this chapter suggests an "appropriate" citizen/execution relationship that is more similar to the debate crowd's response than we might initially expect. Retentionist rhetoric both de-emphasizes the spectacle of execution and suggests an alternative means of understanding, one rooted in emotion and democratic identity. The resulting epistemology at first seems to contrast with the many features of execution that are designed to differentiate it from vigilante "justice." However, de-emphasizing the spectacle allows retentionist rhetors to have the best of

both worlds: execution is still an act of the people, but one that they engage with not by doing violence, but through a group identification, an affirmation of the death penalty. Even more so than lynching, the death penalty's significance extends beyond the physical event to an engagement with the beliefs about community, justice, and criminality that underlie it. And while watching an execution with delight is still constructed as inappropriate, the role of emotion in retentionist rhetoric suggests that the desire for revenge is constitutive of this community. The crowd's response, then, is less aberrant than it might seem.

The underlying logic of citizen/death penalty engagement helps sustain the death penalty in ways that can be significant for abolitionist rhetors. Innocence arguments, increasingly popular in abolitionist rhetoric, provide an example. "Actual innocence" has become a prominent trope of abolitionist rhetoric, thanks in large part to the advent of widespread DNA testing, several prominent cases in which probably-innocent individuals were executed, and at least one case in which a man was exonerated shortly before his execution (Steiker and Steiker 594). It is understandable that abolitionist rhetors would want to highlight these incidents because they seem unambiguously horrifying. Our justice system is supposed to operate on the basis that it is "better that ten guilty persons escape than that one innocent suffer"; thus, the high probability that innocents have been and will be executed, and the certainty that innocents have been wrongfully imprisoned for capital crimes, should make a compelling case for abolition. In reality, however, these arguments are problematic. Legal scholars on both sides of the death penalty debate have noted that innocence arguments allow for the theoretical possibility of an acceptable capital system (one in which only the guilty are executed), and they rely on the general

public's identification with multiply-marginalized individuals: usually poor and undereducated, and sometimes with prior convictions or other less-than-saintly past behavior. Additionally, many cases do not involve DNA evidence, so even strong evidence for exoneration may not convince a wide audience. Absent a video of someone else committing the crime, or someone else confessing, the audience can assume that the condemned is lying and his supporters are just bleeding hearts.

There is a less noticeable problem with innocence, though, and an oft-quoted portion of Scalia's aforementioned response to Souter in *Kansas v. Marsh* illustrates that. *Kansas v. Marsh* was not an innocence-related case, but Souter's opinion suggested that the possibility of executing an innocent person should inform the Court's decisions about the death penalty. Scalia has legitimate critiques of Souter's claims. He points out, correctly, that Souter only identifies people who have been exonerated before execution and that an audience could just as easily take that information as evidence of the success of the judicial system. It is notable, though, that Scalia also acts as if this evidence does not really matter because a real problem with innocence would be self-evident. He explains, "If such an event [the execution of an innocent person] had occurred in recent years, we would not have to hunt for it; the innocent's name would be shouted from the rooftops by the abolition lobby." Abolitionists have occasionally used this statement as a rallying cry, reinforcing commitments to raise awareness of innocent people who have been executed. The front page of the National Coalition to Abolish the Death Penalty's (NCADP) website once cited Scalia's claim, encouraging readers to, among other things, "make a video in which you 'shout from the rooftops' that an innocent person has been executed." But when viewed in the broader context of retentionist rhetoric, Scalia's

statement is not really about the amount or visibility of the evidence, but about the kind of evidence and the people who are dispensing it. The implication here, as in much of retentionist rhetoric, is that the argument is largely over. Individuals need only look to their guts and those of their "real American" neighbors to figure out how to feel about the death penalty.

This chapter has tried to show that the death penalty persists in part because of, rather than in spite of, its modern constraints, and that the implied "right" reaction to an execution is different than abolitionist rhetors often assume. The abolitionist critiques discussed in the introduction, like many anti-lynching arguments, can evince problematic assumptions about how the violence in question functions and reinforce borders between "civilization" and "savagery" that can support violence as easily as they can critique it. These categories of right and wrong response become problematically narrow when we see that retentionist rhetoric both solicits and disavows the desire for revenge, and that the death penalty itself sends messages that do not match the claims in its surrounding rhetoric. While problematic responses may be partially a characteristic of the viewers, then, they are also connected to what the text and its surrounding rhetoric solicit. Without recognition of the nuanced ways in which the death penalty maintains support, abolitionist arguments can unintentionally reinforce entrenched divisions between supposedly elitist abolitionists and the larger crowd of retentionists.

~3~

Constructing the Visible: Appropriate Looking and Inappropriate Audiences

In *Regarding the Pain of Others*, Susan Sontag discusses the challenges involved in looking at images of violence. Sontag notes that viewers often feel obligated to look at images of violence as a means of acknowledging and remembering, but that such viewing often yields complicated reactions, like anger, sadness, frustration, and/or titillation. That these reactions are not mutually exclusive complicates even well-intentioned looking. Sontag explains, "One should feel obliged to think about what it means to look at [images of violence], about the capacity actually to assimilate what they show" (*Regarding the Pain* 75). Without this consideration—and even with it—it is possible to look in a way that reproduces the violence that the image documents.

This part of Sontag's argument represents a persistent conflict in discussions of images of violence. The rhetoric of witnessing suggests an obligation to look at these images, but the image's unstable meaning makes circulating and viewing violence complicated. Scholarly engagements with images of violence have to deal with the image's "social life"; that is, that the image's meaning is determined by context and audience and thus varies with time and situation (Mitchell 93). As Mitchell puts it, images "have legs," accruing new and often unanticipated meaning as they move through the world (31). This quality of images is a source of both promise and anxiety for scholars committed to non-violence. Sometimes images of violence take on anti-violence meanings (for example, anti-lynching activists' use of lynching photographs), but

sometimes their lives are more problematic (for example, the fad of "Doing a Lynndie," in which people photograph themselves gesturing toward others in imitation of a famous Abu Ghraib photograph) ("Lynndie England Pose"). And, as many scholars have noted, even the well-intentioned circulation of images of violence can reproduce power inequalities and/or trauma. Much of the scholarship on these texts engages with questions of what constitutes appropriate looking and how images can be circulated to encourage critical engagement. What makes an image affecting in one context and lurid in another? What makes audiences engage with the suffering an image depicts, and how might we recognize or describe that engagement?

Concerns about the "right" way to look are not unique to anti-violence scholars. A mirror to these anxieties appears in "pro-violence" arguments. In this chapter, these arguments primarily support the death penalty and torture. As I noted in Chapter 2, keeping violence hidden can help its proponents control how audiences interpret the violence. Authorities moved the death penalty out of the public eye in large part because of anxieties about the crowd's response and how that response reflected on the death penalty and the community that authorized it. The absence of a live spectacle or visual record made it easier for the death penalty to fade into the background of everyday life. When that obscurity is breached, the image's shifting meaning becomes a problem for pro-violence rhetors, who then have to find a way to narrow possible interpretations even as the image's context and audience expand. In these situations, the image's shifting meaning can seem like a threat to pro-violence narratives.

This chapter examines the rhetoric around two incidents with widely circulated visual records: the torture at Abu Ghraib prison and the execution of Saddam Hussein.

Both events had the potential to affect public support of the United States' War on Terror and occupation of Iraq. The images associated with these events showed behavior that violated the standards of "appropriate" violence and thus blurred the line between acceptable state violence and the violence it punishes. But arguments from the Bush Administration, the Department of Defense, and other public commentators make these problems less visible through claims about who is capable of understanding these images. Much like the judges who projected negative reactions to the death penalty onto prisoners, these rhetors suggest that many audiences will "misunderstand" these violent images because of cultural differences, personal inadequacies, and/or prejudice against the United States. While deployed for a different purpose, their claims about when and how individuals should look at violence often overlap with concerns that anti-violence rhetors express about taste and appropriateness. Seeing how pro-violence rhetors make use of a binary understanding of looking at violence illuminates the complexities involved in describing "appropriate" viewing.

While these two incidents have important differences, they also have shared qualities that make them valuable sites of inquiry. First, both incidents were embedded in a larger conflict (the second Iraq War and, more broadly, the War on Terror) that, like any armed conflict, required the continual delineation of appropriate and inappropriate violence. The pro-violence rhetoric around these incidents has to maintain the distinction between appropriate and inappropriate violence, and, in doing so, makes the standards for appropriate violence apparent. Second, both incidents had accompanying images—photographs from Abu Ghraib and a cell phone video of Hussein's execution—that circumvented traditional publication processes, raising questions and reinforcing

anxieties about ethics, taste, and audience. Thus, the circulation of these images was also an occasion to make claims about when it is acceptable to look at images of violence. In the rhetoric around these images, both sets of standards are self-serving, encouraging the audience to dismiss the images and ignore the United States‘ involvement in creating the conditions that produced them.

In focusing on these kinds of claims, I address what Nicholas Mirzoeff describes as "visuality." Visuality is "the opposite of the right to look . . . that authority to tell us to move on, that exclusive claim to be able to look" (2). Visuality structures the visible, regulating access and determining what counts as important information for particular audiences. It differs from straightforward censorship in that what would be seen is not always hidden; rather, it can be exposed, but framed in a way that suggests that it is insignificant or dangerous for some viewers. For Mirzoeff, visuality is intimately connected to power, arranging structures of visibility in a way that "[supplements] the violence of authority" (3). These restrictions on visibility influence imaginative capacity as well, structuring what seems possible in ways that, Mirzoeff suggests, often facilitate oppression. When the dominant rhetoric suggests only limited possibilities for a community, it may be more difficult for community members to devise innovative strategies for reform. Mirzoeff's focus on the visual provides a way to address the rhetorical effects of the arguments that surround images of violence. By looking at arguments that address whether certain images are useful, representative, or important, rather than looking at the composition of individual images, we can get a different perspective on the complex functions of images of violence.

The expectations that scholars have for images of violence are not unfounded. What

Hariman and Lucaites call "iconic photographs" and their strategic appropriations can help communities "[contend] with potentially unmanageable events" (34). Images can also alter public perception of a common practice, creating a problem for rhetors who are trying to maintain public support for (or acquiescence to) specific forms of violence. But, as I noted above, visibility does not have to result in increased understanding. As Diana George and Diane Shoos note, "certain uses of the image will deflect rather than illuminate the politics of the event," thereby obscuring the challenging questions that the violence in the image raises (589). This chapter addresses this issue by focusing on how existing understandings of proper viewership can be appropriated to perpetuate violence by reinforcing binaries and deflecting responsibility for violent practices. Deep-seated and complex understandings of how to view violence can mean that these images obscure, rather than illuminate, the causes of and solutions to ongoing violence.

Abu Ghraib and the Representative Image

The Bush Administration began a damage control campaign shortly after *60 Minutes II* aired some of the now-infamous photographs of torture at Abu Ghraib prison in Iraq. The Administration's main claim was that the torture in these images was not representative of the United States or its military strategies, but the act of a few rogue guards. This dissociative strategy deflects responsibility onto a few "bad apples" and away from the higher-ranking individuals and systemic practices that encouraged the torture, but the way that Administration officials addressed the Abu Ghraib images performs an additional function. Recurring claims about representativeness assume a shared understanding of American identity and construct an external audience that is

malicious and uninformed. Even as they address images of torture, these rhetors draw on understandings of appropriate viewing to limit what constitutes meaningful information and specify who can recognize it. The continual framing of specific readings as "unfair" also suggests self-serving standards of deliberation that foreclose any critique of the United States.

Responses to the torture at Abu Ghraib are quick to condemn the soldiers' behavior, but they are typically vague about what makes it unacceptable. Government officials cannot discuss the torture in too much detail without bringing the images to the listeners' mind and, perhaps more importantly, risking condemning something that they or someone else in the administration had previously approved. But the conversation's focus on reputation and perception of the images, along with the specific characteristics of modern torture, make it clear that visibility is a significant part of what made this violence problematic, and not just because that visibility could inspire dissent. Modern democracies typically use stealth or "clean" torture; that is, physical tortures that do not mark the body (Rejali 4). These techniques include stress methods, like forced standing or sleeplessness, as well as methods that produce more pain more quickly, like electrocution and the *falaka*, "an old Middle Eastern technique that involves beating the soles of the feet with a rod or cable" (17). Rejali notes that stealth torture seems to be a response to concerns about domestic and international monitoring and is thus more likely to occur in countries concerned about consent of the governed and international reputation (8). But stealth torture also sends a different message to the torture victim and others who may be aware of the torture in spite of the government's denial. Stealth torture sends the message that the government controls bodies *and* information, since it

inflicts pain without leaving clear physical evidence. It endeavors to eliminate the victim's ability to communicate his or her pain in order to gain control of the victim during and after the torture. Stealth torture thus allows a country to make use of the contrast between its public denial of torture and its hidden practice. The victim may feel especially hopeless knowing that his or her torturer is employed by a supposed human rights leader.

While the torture at Abu Ghraib made use of "clean" techniques, some of them explicitly authorized in government documents, the torture as it was represented in the images violated two dominant understandings of what torture should be.

First, the images make it clear that the torture does not take place within the "ticking time bomb" scenario that designates "acceptable" torture. The torturers do not appear desperate or hurried, in part because they were not responsible for interrogation. Rather, evidence suggests that the guards were responsible for "set[ting] favorable conditions for subsequent interviews"; in other words, pre-torturing detainees so that they would give up more information to Military Intelligence (qtd. in Hersh). The torturers' smiles and their decision to take photographs also disrupts the image of the torturer as hero, getting his hands dirty so that the rest of the United States can be safe. Second, and more clearly connected to the standards discussed above, the images are themselves a violation because stealth torture is supposed to be hidden. Even though many of the techniques the torturers used would not have left physical scars, taking and distributing photographs made their actions visible. Since deniability is the key feature of stealth torture, the pictures are a particular problem, even apart from the specifics of the torture they document.

The Bush Administration's rhetorics of representativeness focus on visibility, but without directly stating that visibility disrupts the ideals or goals of torture. In his repeated insistence that the images from Abu Ghraib "do not represent the values of the United States of America," Bush suggests that the events at Abu Ghraib are tragic largely because of this alleged misrepresentation ("President Bush, Jordanian King"). For example, in his May 5th interview with Al-Arabiya television, Bush said, "This is a serious matter. It's a matter that reflects badly on my country" ("President Bush Meets"). When asked, "How do you think this will be perceived in the Middle East," Bush answered, "Terrible. I think people in the Middle East who want to dislike America will use this as an excuse to remind people about their dislike. I think the average citizen will say, this isn't a country that I've been told about" ("President Bush Meets"). On May 6th, reporting on his meeting with Abdullah II of Jordan, Bush said, "I told him that I was sorry for the humiliation suffered by the Iraqi prisoners, and the humiliation suffered by their families. I told him I was equally sorry that people who have been seeing those pictures don't understand the true nature and heart of America" ("President Bush, Jordanian King"). He made a similar statement again on May 6th:"Today, I can't tell you how sorry I am to them and their families for the humiliation. I'm also sorry because people are then able to say, look how terrible America is" ("Interview of the President").

Bush's commentary attempts to minimize both public anger about and potential criminal liability for the torture at Abu Ghraib by downplaying the violence and constructing the United States as an equal victim. Referring to the torture as "humiliation" suggests that the problem is detainees' feelings about what was done to them, rather than the torturers' actions and the physical harm they caused. The argument

suggests that the torture was not problematic by external legal standards and that the detainees' reactions could be overblown. Bush's emphasis on the damage to the United States' reputation constructs Americans as victims as well. Bush does not suggest that the Americans should or will be humiliated, perhaps because humiliation implies humbling, a recognition of lowness, and his speech portrays the United States as strong. Bush does, however, suggest that Americans will experience psychological pain similar to that of the detainees. The speech deflects responsibility from U.S. military policies and government officials by suggesting that the United States is suffering, too, in a way that is not that different from how "humiliated" detainees felt.

Bush's argument evinces a dualistic understanding of images of violence that strategically incorporates the image's promise and its potential to mislead. Bush grants the images power in his repeated insistence that they do not represent America and in his certainty that they will fool a Middle Eastern audience into believing that the United States is a nation of perverse violence. The image's supposedly reductive and seductive power becomes a core part of his argument, as does the assumed interpretive capacity of the audience. By constructing the images as both worthless and of overblown significance to Muslim audiences, Bush acknowledges the images' social lives while insisting on a single correct understanding. Designating these negative responses as the result of inevitable misunderstanding and misrepresentation allows Bush to account for alternative interpretations without legitimizing them.

Much of the commentary given during a May 7th hearing on the matter mirrors Bush's argument in its focus on the United States' reputation and inevitable "wrong" interpretations of the images. On this occasion, Secretary of Defense Donald Rumsfeld,

along with several other witnesses, testified before the Senate Armed Services Committee regarding their knowledge of and response to the torture at Abu Ghraib. Senator Mark R. Warner, who opens the proceedings, expresses immediate concern for the damage that the images' circulation could do to the United States' mission in Iraq. He notes,

> Most significant, the replaying of these images day after day throughout the Middle East and indeed the world has the potential to undermine the substantial gains—emphasize the substantial gains—toward the goal of peace and freedom in various operation areas of the world, most particularly Iraq, and the substantial sacrifice by our forces, those of our allies, in the war on terror. ("Rumsfeld Testifies")

Most of the committee members make similar statements. Senator Susan Collins' statement is dramatic, but representative. She laments that "a nation that, to a degree unprecedented in human history, has sacrificed its blood and treasure to secure liberty and human rights around the world must now try to convince the world that the horrific images . . . are not the real America" ("Rumsfeld Testifies"). While some committee members ask Rumsfeld about who should be held responsible for the torture, the conversation focuses on the images as an unfair misrepresentation of the United States. Accordingly, much of the conversation focuses on Rumsfeld's failure to control information, including the failure to inform Congress about the images before they were released to the public, as well as a botched attempt to delay CBS's broadcast of the photographs.

Rumsfeld's statement shows similar concerns. Rumsfeld is the focus of the conversation, and he gives an opening statement and answers most of the questions. He apologizes somewhat more directly for the torture than Bush does, noting that the

detainees were "human beings" and the United States did not "treat them right," but he moves quickly into talking about the United States' reputation:

> I regret the damage that has been done…to the reputation of the honorable men and women of our armed forces . . . to the President, Congress, and the American people. I wish we had been able to convey to them the gravity of this was [sic] before we saw it in the media . . . to the Iraqi people, whose trust in our coalition has been shaken; and finally to the reputation of our country." ("Rumsfeld Testifies")

Rumsfeld discusses the investigation into the torture, then goes on:

> None of this [information about the investigation] is meant to diminish the gravity of the recent situation at Abu Ghraib. To the contrary, that is precisely why these abuses are so damaging—because they can be used by the enemies of our country to undermine our mission and spread the false impression that such conduct is the rule and not the exception—when, in fact, the opposite is true. ("Rumsfeld Testifies")

The overriding emphasis in Rumsfeld's speech is, not surprisingly, the same as that of Bush's. While Rumsfeld does suggest that the detainees were treated inhumanely, he emphasizes that the government's main area of concern is the ways in which outsiders will "misinterpret" the images. The "recent situation at Abu Ghraib" is grave not because detainees were tortured, but because of how others will understand that torture. Rumsfeld is especially clear about how this supposed misinterpretation can damage the United States' "mission." This part of his argument suggests that future violence or a lack of military progress is not due to American mismanagement or legitimate critiques of the

United States, but rather a result of incorrect understandings of what Rumsfeld frames as a minor incident. His argument also emphasizes the alleged unfairness of this portrayal by lamenting ongoing criticism of the United States. He states, "[W]e have been enormously disadvantaged by false allegations and lies . . . we have taken a beating in the world for things were were not doing that we were alleged to have done" ("Rumsfeld Testifies"). The use of a violent metaphor and the emphasis on "false allegations" diminishes the significance of the torture at Abu Ghraib and again constructs the United States as a victim.

The claims these arguments use to naturalize limitations on the right to look are consistent with broader understandings of how images of violence work. First, these arguments rely on the assumption that an image of violence that does not provide insight is not worth viewing. This belief is implicit in the scholarly division between witnessing and spectatorship. While definitions of "witnessing" vary slightly, witnessing typically involves looking at, reading about, or hearing about violence for an anti-violence purpose. The witness remembers the violence she sees so that she might later prevent similar violence, either on her own or by spreading knowledge of the prior violence. Bush and Rumsfeld's dismissal of the Abu Ghraib photographs suggests a similar protocol for viewing violent images: we should only look at those that can tell us something valuable about a broader problem. Obviously, Bush and Rumsfeld's opinion is controversial. Most of the criticism of the torture and the rhetoric around it says that these images *were* representative—that, as Susan Sontag put it, "the pictures are us" ("Regarding the Torture"). Even if these pictures were not representative of larger policies, most understandings of witnessing would suggest that viewers should still acknowledge and

remember the suffering that the images document. In spite of this conflict, however, Bush and Rumsfeld's adherence to this understanding of appropriate viewing allows them to draw on concerns that Sontag and other scholars would share about looking at violence for the wrong reasons.

These arguments' focus on the injustice of these alleged misinterpretations suggests self-serving standards of decorum that overlap with those of pro-lynching rhetoric. Rumsfeld and Bush both suggest that outsiders cannot judge the United States by its actions because they do not know its "true nature and heart" ("President Bush, Jordanian King")**.** These arguments make "fair" critique impossible because the only people who would be permitted to say anything are those who would already agree with Bush and Rumsfeld's beliefs about the United States' inherent goodness. Rumsfeld suggests that a certain form of outrage or disappointment is appropriate, but his and other arguments on this topic insist that outrage directed at the United States is unfair. Like Northerners who allegedly used lynching as "an excuse..to denounce lynch law without ever once seek to cast odium upon the provoking crime," some Muslims will use the torture at Abu Ghraib "as an excuse to remind people about their dislike" for the United States ("The Adams Bill," "President Bush Meets"). These arguments assume an audience whose interpretation is clouded by prejudice for the South and the United States, respectively. By constructing opposition as the mark of this prejudice, Bush and Rumsfeld make support of their position a marker of "true" American identity. The ingroup understands that the images are detached from "Americanness," while the outgroup does not.

These arguments do not suggest that the images are useless, however. Importantly, Rumsfeld argues that he could not understand the torture's severity before he saw the

photographs. When asked why he did not investigate more thoroughly after receiving written reports of torture at Abu Ghraib, Rumsfeld explains, "You read it, as I say, and it's one thing. You see these photographs and it's just unbelievable . . . [A]t that stage, it was one-dimensional. It wasn't video. It wasn't color" ("Rumsfeld Testifies"). For Rumsfeld, the photographs are highly informative, but he suggests that they will not have the same clarifying value for "outsiders." Rumsfeld is thus able to deflect responsibility for the torture while still regulating the images' visibility. Like Bush, he draws on understandings of the image's social life: while the Abu Ghraib images were deeply informative for him, other audiences cannot be trusted to understand them correctly.

Bush and Rumsfeld's arguments about the Abu Ghraib photographs, then, regulate the "right to look" in large part by regulating the right to interpret. While the photographs are visible to anyone with Internet access, Bush and Rumsfeld restrict the ways in which that looking can be made public. Within the logic of these arguments, to speak about these photographs in a negative way is to mark oneself as an outsider and a threat. The implication is that viewers should stifle their objections and, importantly, that the federal government may have the right to do so as well. By placing the United States' reputation at the center of debate, Bush and Rumsfeld suggest that maintaining a specific vision of Americanness is the most important goal in the aftermath of Abu Ghraib.

Culture and the Overpowered Image

While the arguments discussed above echo those of many pro-lynching rhetors, the claim that the outgroup will misinterpret the violence—and, in particular, images of violence—takes on additional significance in the context of the War on Terror. Many of

the "right to look" claims that structure these arguments rely on a "cultural difference" frame based on Orientalist assumptions about Muslim and Arab viewers.

We can see this construction in an argument about unreleased images of torture. In 2003, the American Civil Liberties Union (ACLU) invoked the Freedom of Information Act to request release of "records relating to the abuse and torture of prisoners in U.S. detention centers overseas" ("ACLU"). While the Department of Defense (DOD) released many documents, it withheld some, including images and videos of torture. Among these images were the unreleased photographs of the torture at Abu Ghraib, part of the larger collection known as the "Darby photographs."

The DOD arguments were thus focused on explaining why images in particular should remain hidden from the general public.

Like the arguments for obscuring execution discussed in Chapter 2, many of the DOD's arguments focused on danger to US personnel, but with a focus on soldiers instead of corrections officers. Their explanations of this danger, however, are different. A DOD appeal brief cited testimony by Deputy Assistant Secretary Ronald Schlicher:

> Mr. Schlicher informed the court that the humiliation depicted in the Darby photos would be viewed not simply as an attack by renegade soldiers on individual detainees, "but as an attack by the United States against the wider cultural identity of Muslim society." He further stated that the release of the Darby photos "would be regarded by Iraqi public opinion, and opinion in the wider region, as an attack by the United States on Arab (Muslim) society as a whole." This would provide terrorist organizations, such as al-Qaeda and Iraqi insurgent groups, "with a justification for attacks on Coalition personnel." ("Brief for Defendants-

Appellants" 20)

Schlicher's claim that Arabs/Muslims would perceive torture as a cultural attack implies a narrow understanding of Arab/Muslim culture. As Jasbir Puar notes, the torture at Abu Ghraib was based in part on the assumption that Muslims were especially sensitive to nudity and sexual humiliation (83). Seymour Hersh cites an unnamed academic who states that *The Arab Mind,* an Orientalist text, was "the bible of the neocons on Arab behavior," and it maintained that "the biggest weakness of Arabs is shame and humiliation" (qtd. in Hersh). While the torture at Abu Ghraib was at least partially improvised, these conceptions of Muslim culture clearly informed the torturers' strategies. While there is no proof that soldiers ever intended to circulate the photos of sexual torture beyond their social network, the soldiers told detainees that images of them being forced to perform sexual and sometimes homosexual acts would be given to their families. This threat was supposed to frighten detainees so that they would be more willing to talk to interrogators (Hersh). Schlicher's argument, then, suggests that the anger and trauma associated with torture is the result of cultural difference. This claim reinforces differences between Muslims and "Americans," a group that, by Schlicher's implicit definition, is neither Muslim nor Arab.

Schlicher also makes an interesting claim about how Middle Eastern Muslims perceive Americans. It is common for individuals to perceive outgroups as monolithic, while they perceive their ingroups as diverse. Schlicher seems to accuse Muslims of such an attitude even as he projects a monolithic identity onto them. In a version of Bush and Rumsfeld's claim, Schlicher suggests that Muslims will not be able to distinguish what the government has characterized as an isolated incident from the broader essence of the

United States. Characterizing Muslims this way allows Schlicher, and by extension the DOD, to maintain that the United States is a victim in the situation and to suggest that releasing more photographs will only victimize it further.

The "cultural conflict" frame in this brief also emphasizes Orientalist beliefs about assumed Muslim relationships with images and objects. W.J.T. Mitchell argues that Westerners often project animistic beliefs onto "others," including "primitive" cultures (Mitchell 7). While "Westerners" are supposed to understand that pictures and objects have no special power, outgroups are often portrayed as idolators, disproportionately attached to particular objects or images. This brief's argument is largely structured around this perceived difference. The brief details several prior incidents to illustrate why releasing torture photographs would pose a threat to overseas personnel and the United States as a whole. The first of these examples, and the one that the brief discusses in more detail, focuses on an apparently false report in *Newsweek* magazine that guards at the detention facility at Guantánamo Bay had desecrated the Quran to humiliate Muslim detainees. The brief notes that, after the story was published, "massive, violent, and deadly anti-U.S. demonstrations quickly erupted in the Palestinian territories, Egypt, Sudan, Bangladesh, Pakistan, and Indonesia." It goes on: "Despite *Newsweek*'s published retraction, many Muslims still believe that United States personnel desecrate the Koran to humiliate Muslims" ("Brief for Defendants-Appellants"11). Like Rumsfeld's complaint about "false allegations," this example implies an equivalence between a false report and the well-documented reports of torture at Abu Ghraib. The example also suggests that Muslims cannot or will not distinguish between true and false reporting. Additionally, by focusing on the value of a sacred text—an object—the brief invokes the

civilized/primitive binary that Mitchell describes. Because animism is the mark of the "other," the audience for this brief can be assumed to see the Muslim response as disproportionate. The argument suggests that Muslims are unreasonable because they will react with violence to an unfounded report of the violation of an object.

A later example in the brief makes even clearer claims about Muslim relationships with their own icons. The brief cites the uproar over the 2006 publication of an image of the prophet Muhammed in a Danish newspaper. While this example references an actual incident instead of a false report, it, too, constructs Muslims as oversensitive to cultural attacks. Referencing the prohibition on images of Muhammed in particular helps reinforce binaries based on a teleological understanding of relationships with images. "Advanced" civilizations understand that it is inappropriate to respond to an image with violence; "others" or "primitives" perceive the image as such an insult that they cannot control their violent response. The brief's attention to this incident places relationships to images at the forefront, thereby drawing focus away from American wrongdoing and strategic error.

The brief's argument is especially interesting in relation to Bush and Rumfeld's concerns about the United States' reputation, cited in the section above. This brief constructs Muslims as highly sensitive to insult and suggests that they will take drastic measures to respond to any perceived injustice. That Bush's and Rumsfeld's arguments erase violence to focus on insult paints them in a similar light. Indeed, this emphasis on inappropriate attachment to culture may seem odd, especially given that the War on Terror was often framed as a defense of America's way of life. President Bush's suggestion that Americans shop and go on vacation in the wake of the September 11th

attacks was an effort to maintain economic stability, but also a construction of normalcy. Americans were supposed to go on as if their country were not going to war (Engels and Saas 226-227). If Americans changed their lives, it was suggested, the terrorists would win. But asymmetrical understandings of culture allow for this aspect of the War on Terror to coexist with the claim that one group is *too* attached to its way of life. Wendy Brown explains that "culture" applies differently to ingroups and outgroups: "culture is understood to drive Them politically and to lead them to attack Our culture, which We are not driven by but which we do cherish and defend" (20). By this logic, Americans/Christians *have* a culture, while Middle Easterners/Muslims *are* a culture. Understandings of terrorism amplify this division. While American soldiers are constructed as individuals whose military duties are separate from their personalities and individual desires, terrorists *are* terrorists. As Michael Vicaro puts it, "US officials tend to characterize combatants as individuals whose enmity is a part of their essential self and an outcome of a subjective transformation associated with their innermost religious identity" (415). The DOD's arguments reinforce these differences and thus an internal logic that motivates torture. When the combatant is "presumed to be *fundamentally* violent," then there are few options for persuasion (Vicaro 416; emphasis original).

By suggesting that Muslims are inseparable from their culture and providing only examples of Muslim anger about cultural violations, this brief constructs torture as the result of cultural difference. Within the brief, there is no difference between insulting a Muslim's religion and harming his or her body, so violence is erased and reconstructed as form of "cultural conflict." Like Bush's use of the word "humiliation," which suggests that torture victims might just be oversensitive, the assumptions about Muslim "nature"

implicit in this brief suggest that Muslims are the origin of all Muslim-related violence, including that of which they are victims. The resulting frame is obviously damaging, one that reinforces the construction of Muslims as "other" and makes insult and violence equivalent. While this equivalence could translate into soldiers declining to harm the bodies of Muslim detainees and instead attacking their beliefs, in light of the understanding of the terrorist as "*fundamentally* violent," it seems more likely that the equivalence of body and cultural iconography would cultivate further objectification of Middle Eastern Muslims (Vicaro 416).

Like arguments about death penalty deterrence, the brief's argument is likely persuasive only through appeals to fear and a form of "common sense." The brief argues that Muslims will respond with violence to any perceived slight, even if it is later proven untrue. The brief thus denies the "right to look" based on the assumption that certain audiences are naturally violent and incapable of interpreting this sort of imagery. This extreme characterization of Muslims is the core of the argument, but it also raises a problematic question: if Muslims are likely to be offended and become violent with little or no provocation, why does it matter whether they see the images? Like the retentionist arguments that insist that the death penalty deters crime, this brief relies heavily on the assumed reactions of a supposedly irrational and unpredictable enemy and the fear that Americans are supposed to feel in relation to that enemy. For the argument to work, then, it has to rely mostly on fear. While we may never be able to stop terrorists, the brief suggests, Americans should do whatever they can to avoid incurring the enemy's rage, even if they cannot be certain that their actions will work.

Framing Saddam Hussein's Execution

Like the images of the torture at Abu Ghraib, the cell phone video of Saddam Hussein's execution had the potential to challenge pro-war claims about the purpose and achievements of the United States' invasion of Iraq. The execution "came at a point of heightened dissatisfaction with the 'war on terror,' which had reached a turning point with the images from Abu Ghraib" (Zelizer 293). Hussein's importance in pre-war rhetoric put additional pressure on his execution to function as an indication of progress in an increasingly intractable conflict, but ongoing violence, as well controversies around the execution itself, made it seem unlikely that the execution would increase stability in Iraq or reverse Americans' growing dissatisfaction with the war. As much as anything else, Hussein's unruly execution exemplified the problems associated with the invasion of Iraq. By most accounts, the execution was planned poorly, conducted sloppily, and lacked the impact American authorities initially claimed it would have. Far from an example of "civilized" violence, the execution highlighted the gap between the glory of pre-war rhetoric and the reality of a then three-year-old conflict.

While Hussein's execution seemed destined for disaster, actual reactions, as expressed in public commentary on the execution, were more complicated. There was significantly less discussion of Hussein's execution than there was of the photographs from Abu Ghraib, and most of it was concentrated on the day of and the day after the execution (Dimitrova and Lee 542). There were two dominant threads in this conversation: critiques of the execution procedure, and arguments concerned with where and to whom the cell phone video was available. This section will deal with the first arguments that, while less obviously concerned with regulating visibility, structure

understanding of the spectacle of Hussein's execution. By focusing on the Iraqi government's failure to ensure decorum and the possibility of violent Sunni reaction, these arguments draw attention away from the procedural issues that occurred during Hussein's trial and erase the United States' involvement with the trial and execution. They also construct Iraqis as incapable of the "appropriate" violence and "justice" that democracy demands. While seemingly threatening, the cell phone video actually allows rhetors to reinforce difference and standards of appropriate violence while avoiding questions of responsibility, complicity, and what constitutes "justice."

There were two videos of Hussein's execution. The first, produced and released by the Iraqi government, showed an orderly proceeding in which two masked men led Hussein to the gallows and put a noose around his neck. The video did not have sound, nor did it show the moment of Hussein's death. This video was recorded to serve as the primary documentation of the event. Along with an image of Hussein's corpse after it was removed from the noose, the video circulated on Iraqi and American news stations shortly after the execution (Raman et. al.). The second video, recorded on a cell phone, painted a different picture of the event. Unlike the official video, the cell phone video showed the moment of Hussein's execution, and an image of Hussein's "horribly twisted" face at the end of the noose (qtd. in Stanley). The cell phone video also had sound, so it documented the audience taunting Hussein, Hussein's responses, and his prayer as he dropped from the gallows. While the official video seemed almost congenial, with Hussein interacting politely with his guards, the cell phone video showed a disorderly and adversarial proceeding. The addition of sound specifically highlighted sectarian conflict. As Hussein stood on the gallows, audience members yelled

"Muqtada," referring to Shiite religious leader Muqtada al-Sadr. Sadr's popularity was built in part on the legacy of his father, who was killed by Hussein's forces (Klein).

Much of the commentary on Hussein's execution addressed this disorder, but with a limited view of its cause and consequences. Dimitrova and Lee note that most of the procedural critiques of Hussein's execution focused on flaws that occurred within the execution itself (543). But while Dimitrova and Lee suggest that this frame implies concern about the human right to a dignified execution, many of these arguments appear to be concerned about the execution's indignities only insofar as they might upset Sunnis and inspire sectarian violence (544). Like the speakers at the Senate Armed Services hearing discussed above, many commentators and political authorities suggested that Hussein's "botched" execution would harm the United States' mission in Iraq. When asked for comment, Senator John McCain said, "It's a bad thing, it's harmful, and I'm sorry that it happened. Obviously, it unnecessarily inflames the emotions of the Sunnis" (qtd. in Zeleny and Cooper). Senator Susan M. Collins made a similar comment, explaining that "taunting someone who is about to be executed is just blatantly unacceptable" and that the video would likely anger Sunnis (qtd. in Zeleny and Cooper). Tom Brokaw maintained that Hussein "was a god awful man," but "to have [the execution] just fuel more sectarian violence at a time when we are trying to dampen that is not helpful, which is an understatement" ("Brokaw: Hussein Execution").

Like the arguments about the Abu Ghraib images, these arguments paint the United States as a victim, unfairly affected by circumstances beyond its control and audiences that react with violence to any signs of disrespect. The pervasiveness of this "Sunni violence" frame shifts the focus from the United States to the assumed violence of Sunni

spectators. Some mention of sectarian violence is to be expected. Sectarian violence was, and, at the time of my writing, is a problem in Iraq, one that destabilized the pre-war vision of a cohesive Iraqi state that could be easily transformed into an American-style democracy**.** The dominance of the Sunni violence/American mission frame, however, makes it seem as if the violence in Iraq is based largely on one audience's disproportionate reaction to Hussein's death. Within this frame, instability comes from Iraqis, and stability is the United States' mission. This frame on Hussein's execution is thus consistent with the broader rhetoric that justifies the occupation.

The focus on Sunni reaction is part of a larger frame that deflects the United States' involvement in Hussein's execution and Iraq's ongoing instability. Much of the broader commentary and all of the Bush Administration's commentary on Hussein's execution gives Iraqi officials the sole responsibility for the execution's disorder and any subsequent problems. American and Iraqi authorities consistently emphasized that the United States was not involved in the execution. American military spokesman Maj. Gen. William Caldwell IV replied to questions about the execution: "You know, if you're asking me, 'Would we have done things differently,' yes, we would have . . . But that's not our decision. That's an Iraqi government decision" (qtd. in Glanz and Burns). These claims rely on a narrow understanding of what it means to be responsible for an act of violence, as well as a limited view of the causes of sectarian violence in Iraq. While there were no American personnel in the execution chamber, the United States captured Hussein, helped to establish the tribunal that tried him, and held him until just before his execution, when he was transferred to Iraqi custody and executed at a joint US-Iraqi military facility known as "Camp Justice." Additionally, the United States was still

occupying Iraq at the time of Hussein's execution. Constructing the execution as a solely Iraqi blunder, then, separates the execution from a recent history of violent occupation and suggests that any discontent that follows the execution is due to Iraqi inadequacies rather than ongoing instability.

The focus on the disorder at Hussein's execution also elides controversial procedural issues in Hussein's trial. The Human Rights Watch (HRW) report "Judging Dujail" enumerates several problems with the Iraqi High Tribunal (IHT) in general and Hussein's trial in particular. The IHT's unusual hybrid construction was one source of concern. The report explains, "The IHT has jurisdiction over Iraqis, and non-Iraqis residing in Iraq, accused of committing genocide, crimes against humanity, and war crimes between July 1968 and May 2002" (HRW). Unlike the international tribunals more typically convened to deal with large-scale violations of international law, the IHT paired crimes defined by the Rome Statute of the International Criminal Court with procedures and penalties from Iraqi law. This hybridization meant that the IHT did not use the special procedures that other international courts developed to handle large-scale crimes with multiple defendants. Additionally, the Tribunal's requirement "that the judges, prosecutors, and staff of the court, and the principal defense lawyer for the accused, be Iraqi nationals" meant that many of the individuals involved in the trial had little or no experience with international law (HRW). Hussein's trial did little to assuage doubts about the IHT's capacity to fairly and effectively try these serious crimes. HRW identified several issues with the trial, including a lack of impartiality, violations of Hussein's right as a defendant, and "lapses in judicial demeanor," among other issues. The report concludes that the trial "did not meet key fair trial standards" and that "the

soundness of the verdict is questionable" (HRW). The report, then, provides many reasons why even individuals who support the death penalty might object to Hussein's execution.

In most death penalty rhetoric, a fair trial is supposed to be a key part of the death penalty process, and fairness seems especially important in this case, given the purported goals of executing Hussein. The lack of attention to the trial's procedural issues in so much of the post-execution commentary suggests that Hussein's execution is detached from the events that precede it. George W. Bush's speech on the execution, prepared before the cell phone video was widely circulated, manages the audience's expectations, but still suggests that Hussein's execution will facilitate democracy. He states, "Bringing Saddam Hussein to justice will not end the violence in Iraq, but it is an important milestone on Iraq's course to becoming a democracy that can govern, sustain, and defend itself, and be an ally in the War on Terror" (Longley). According to Bush, the execution is a necessary part of Iraq's transformation into an American-style democracy, but his elision of Hussein's controversial trial suggests that execution is the only part of this democratic ritual that matters. "Justice" in this context is less a product of a calculated legal process and more a performance of that process, a decision to go through the motions to give a respectable sheen to the ultimate goal: killing someone. In this way, the rhetoric around Hussein's execution mirrors lynchers' minimal attempts to justify their actions through the imitation of public execution and the public insistence that lynching was punishment for a crime. Bush's speech ignores the highly problematic systemic violence leading up to Hussein's execution to better glorify it as an example of democratic progress.

The claim that the execution could have served a positive rhetorical purpose reinforces a teleological narrative in which civilization is based in part on wielding violence in a dignified way. Because Hussein's execution is largely constructed as the result of Iraqi error, critiques of the execution often imply American superiority. While Noah Feldman's critique is one of the few that mentions the problems with Hussein's trial, it also suggests that the execution was a "missed opportunity" for Iraqis to practice sober and dignified justice. Feldman suggests that, if American forces had provided more security, the execution could have had a positive, constitutive effect. Even though Feldman acknowledges American responsibility, his argument keeps understandings of how execution works intact, thereby reinforcing the claim that violence is an essential part of community building.

The White House gave no official comment on the cell phone video at the time of its release, but Bush's statement in mid-January also suggests that the execution would have send positive messages if Iraqis had performed it correctly. He states,

> I was disappointed and felt like they fumbled the—particularly the Saddam Hussein execution . . . The message is confusing. It basically says to people, "Look, you conducted a trial and gave Saddam justice that he didn't give to others." But then, when it came time to execute him, it looked like it was kind of a revenge killing. (Moore)

Bush's statement maintains this narrow understanding of "justice" and projects responsibility for the execution's rhetorical failure onto Iraqis. While Americans can use violence correctly, according to these arguments, Iraqis cannot. His description of the execution as a "revenge killing" also highlights both sectarian conflict and Hussein's

responsibility, deflecting responsibility from the US forces.

In this way, the Hussein execution video actually allows for a dual othering centered on inappropriate uses of and responses to violence. The focus on Iraqi incompetence and the execution's rhetorical failure suggests that Iraqis are less advanced than Americans because they cannot conduct state violence with the solemnity and didacticism that is supposed to characterize domestic executions. Thomas Friedman, for example, refers to the disorder at the execution as "raw tribal theatrics," suggesting that the conflict marks Iraqis as uncivilized. The decorous use of state violence is a key part of "civilization," and the execution video offers rhetors the opportunity to critique what they see as an inappropriate response to execution. The decontextualized focus on potential Sunni violence reinforces a civilized/savage binary as well. Like the arguments that claimed that Muslims would turn to violence in response to the Abu Ghraib images, the focus on Sunni violence projects a monolithic Sunni community and ignores the range of opinions about and reactions to Hussein's execution. These arguments insist that Hussein's execution was by and for Iraqis, and was botched in large part because of their internal flaws.

Because the surrounding arguments consistently deflect responsibility onto Iraqis, the visibility of Hussein's execution actually lends itself to an argument for continued American intervention. Unlike the Abu Ghraib images, the Hussein execution video is framed as an important source of information. This frame, however, provides an incomplete picture of Iraq's recent history. Much of the rhetoric around this event suggests that the video illustrates an endemic violence and chronic ineptitude that is separate from the United States' invasion and occupation. Even arguments that

acknowledge the United States' partial responsibility rely heavily on American understandings of what appropriate violence looks like, along with the implication that appropriate violence is the mark not just of democracy, but of civilization. By this logic, Saddam Hussein's execution changes from the spectacle that would help end United States involvement to one that illustrates how much American forces are still needed.

The Hussein Execution Video and The Right to Look

The other thread in the conversation about Hussein's execution builds on the claim that Iraqis are the only appropriate audience for the event and its corresponding video. Because the execution was (and is, at the time of my writing) widely available online, Americans had access to the video, and it was very popular. While the official video had more initial views on YouTube, Zelizer notes that the cell phone video "went viral almost immediately" and that, "within 48 hours," the YouTube version of the video had 350,000 views (296). Much of the commentary on Hussein's execution addresses this viewership with the assumption that Americans, detached from the political and social impact of Hussein's execution, will only watch the cell phone video for perverse enjoyment. By painting American viewership as excessive and inappropriate, these rhetors reinforce the separation of the United States from Hussein's execution and draw on demophobic anxieties about "taste" to reinforce class-based group identities and elide more nuanced responses to violence. While the American audience is characterized somewhat differently that the Muslim audiences discussed in the earlier parts of this chapter, its characterization is significant in that these arguments similarly circumscribe the right to look at a particular act of violence by linking negative reactions to an outgroup.

Even before the cell phone video leaked, there was debate about how much of Hussein's execution American news stations should show. The Iraqi government would record the execution, and news organizations knew that they would have access to some images, whether video or still. Since they had advance notice, news stations "had time to set in place provisional guidelines for how to cover the goriness that would come" (Zelizer 294). There were even online resources that suggested strategies—for example, "cropping" and "adding black bars"—-for managing the graphic footage (Zelizer 294). The frame, as Alessandra Stanley notes in her coverage of the event, was one of performed reluctance. She explains that news anchors awaiting imagery of the event on the night of Hussein's execution

> repeatedly assured viewers that, for deep-rooted cultural reasons, the Iraqi public would need to see a videotape of Saddam Hussein's execution—as if implying that left to their own devices, the anchors would prefer to just flash a copy of the death certificate. For its own cultural reasons, American television needed to paint morbid curiosity and the competitiveness of live television as a duty executed soberly and reluctantly.

Stanley identifies the tension in these conversations: news stations want to foreground the dramatic without breaching journalistic decorum. The conversation, like many of the conversations about making violence visible, raises questions about the informative value of the images. What, if anything, do Americans *need* to see to understand the event, and what visual information is excessive? To answer these questions, news stations and individuals would have to consider not just the merits of any visuals that became available, but also Americans' relationships to this event and their likely reactions to the

images.

For most commentators, the assumed likelihood of tasteless reactions made the cell phone video inappropriate viewing for Americans. Clarence Page's response is a good example. Like the arguments discussed in the previous section, Page's piece constructs the execution as a rhetorical failure, unnecessarily upsetting Sunnis, but he seems especially concerned about the video's circulation before an American audience. Writing in the *Buffalo Times*, Page notes that the video of Hussein's execution has changed his beliefs about what execution images can do:

> Although I oppose the death penalty, I toyed for many years with the notion that all executions should be televised. The video of Saddam Hussein's hanging that has popped up on various Internet sites has disabused me of that notion. Too many viewers appear to be enjoying it too much.

Page goes on to offer a relatively common apocalyptic vision of a future in which the death penalty is televised. He suggests that Americans would watch the "Capital Punishment Channel" with such frequency that "[s]tates like Texas and Florida, in which executions have been most plentiful, might find an new revenue source . . . in auctioning off TV rights in much the way that the sports franchises do." While Page ultimately shifts the focus back to the political, stating that Americans should not want to be associated with this grotesque manifestation of "justice," most of his argument centers on the horror of this inappropriate viewing and slippery slope claims about American appetites for carnage.

Page's argument, like others on this topic, suggests a deviant relationship between spectator and image. Page does not explain how he knows that viewers are "enjoying [the

video] too much," or what such enjoyment would look like. He notes "[t]he buzz generated by Hussein's video" and laments a website that offered the video in portable formats, so that "[w]eb-savvy kids can share Hussein's last moments with each other on video iPods that Santa brought." For Page, the problem is simply that people are watching, and that concern implies a monolithic understanding of how Americans watch violence. While Page does not call this kind of viewing "pornographic," his indictment of excess enjoyment suggests a similar sort of "low" or visceral pleasure. Eugene Robinson's editorial is somewhat more explicit on this point. Robinson cautions, *"*Anyone thinking of watching [the video] should be warned that the camera does not shirk from the inevitable 'money shot'—the grotesque moment when the trap door opens and Saddam Hussein's life is terminated. It's history as snuff film." This description suggests that the video's composition and the audience's assumed reaction are both deviant. The term "money shot" is associated with both journalism and pornography, and Robinson's commentary invokes both of these meanings. In pornography, the "money shot" is the image of ejaculation that provides the viewer with "visual evidence of the mechanical 'truth' of bodily pleasure" (Williams, qtd. in Gunn 371). In journalism, the "money shot" is the photograph a newspaper will purchase. While the journalistic money shot need not contain gore, the truism that "if it bleeds, it leads" suggests that images of violence will be more profitable than other kinds of images. The use of this term to refer to the moment of Hussein's death suggests that viewers will get a perverse thrill from seeing the execution. Robinson's use of the term "snuff film" has a similar effect. Snuff films record someone being killed for the enjoyment of those who watch the film later. Robinson suggests that the video is designed for perverse consumption and that audiences

are unlikely to deviate from that mode of viewing.

The construction of the audience as excessively desirous overlaps with the rhetoric of death penalty obscurity discussed in Chapter 2, and that association clarifies the classed implications of these arguments. The move to private executions was motivated in part by a belief that spectators at public hangings exhibited "too much feeling" and "the wrong kind of feeling— frivolity where gravitas ought to be, working-class rather than aristocratic sentiment" (Reichman 550). Unlike the restrained upper class, the poor were assumed to embrace all of their excessive feelings, creating an inappropriate atmosphere at what elites intended to be a sober and terrifying event. While it is more subtle, the judicial rhetoric that maintains execution obscurity has a similar undertone. The assumption that the visual text of execution offers no information relevant to the general population assumes that the desire to see an execution is excessive. Within this frame of appropriate and inappropriate looking, Americans should not want to see even their domestic executions because authorities say there is nothing to be learned from them. Judge Schnacke's assertion that journalists who request to record executions are "aggressive" has similar implications (*KQED)*. In those cases and in this one, speakers assume that the spectator is detached from the event and thus any desire to see it marks the spectator as perverse and, implicitly, lower-class. Schnacke's use of the word "aggressive" even projects the execution's violence onto spectators, suggesting that, if an individual wants to see the execution, then she is the violent one.

Philip Kennicott's editorial in the *Washington Post* is similarly condemnatory, but contains a broader critique of online culture. Kennicott uses his piece on the Hussein execution video to lament the corrupting culture of "viral video," which he says typically

includes "footage of horrendous car accidents, Jerry Springer-like brawls and people getting gunned down in Iraq." The video of Hussein's execution, Kennicott suggests, is just one of the many horrific online spectacles for which Americans have an endless appetite:

> The public will find exactly as much of the death of Hussein as it wants, and people will watch for as long as it holds any novelty or fascination. Taste is a collective worry, but in this new world of viral videos, you can construct your own war, personally tailored to your personal bloodlust. Saddam Hussein is dead, the video is out there. Enjoy.

Like Page, Kennicott is concerned with the video's availability because of what it will presumably awaken in spectators. His argument implies that the "new world of viral videos" does not create, but caters to, an existing perversion in American viewers. "[T]he public," according to Kennicott, is always horrible; the Internet makes it easier for them to see the terrible things that they have always enjoyed.

Kennicott's mention of "taste" makes explicit the classed implications of Page and Robinson's arguments. As I noted in the beginning of this chapter, anti-violence scholars often suggest that an image of violence is valuable only insofar as it can teach the viewer something that will help honor victims or prevent future violence. This utility comes from both image and viewer, since a viewer could become a "spectator" rather than a "witness" by watching passively or with enjoyment. In assuming that the majority of American viewers watch this video in a distasteful way, the authors assert superiority over the morally corrupt masses. In Chapter 2, I discussed how the movement toward private, "humane" execution was fueled by the Victorian belief that men and women of

taste should turn away from any visual unpleasantness, especially if that unpleasantness had to do with the body. While this reaction may often have been genuine, it was also a performance of class. Failure to look away would mark the spectator as tasteless, like the poor and working class crowds whose presence was also supposed to be viewed as distasteful. This commentary on Hussein's execution draws a similar line between the authors and the masses. Just as Rumsfeld could learn from the images of Abu Ghraib, but Muslims could not, these authors reserve interpretive rights by assuming a public too perverse and ignorant to understand how to watch violence.

These characterizations of the public ignore a wide variety of possible responses to the Hussein execution video. Even the most "extreme" population of viewers, those who regularly seek out gory images, may not do so with the motives or responses the commenters assume. Gore site users suggest that gory images allow them to access a "real" world hidden by mainstream media censorship, arguing that images are necessary for a truer understanding of world events. As one user put it, "[R]egular people know that humans were beheaded in Iraq . . . But the fact that the actual video and audio of the beheadings were never shown in the mainstream media means that people do not REALLY know . . . The fact is a simple pale statistic to them, not an experience" (qtd. in Tait 104). "Raw" or "uncensored" images trade in authenticity, and their viewers may feel that visual access gives them more in-depth knowledge of current events or life in general. Since the extensive media coverage of Hussein's execution suggested that the event was newsworthy, it is possible that some users wanted to see the video to better understand an important world event. The video's wide circulation would feed into this reasoning as well. The more people saw it, the more someone might feel he or she needs

to see it in order to be informed.

The assumption of enjoyment also elides a range of responses that could be hidden behind inaction. Susan Sontag explains that people who appear or even feel apathetic are not necessarily uncaring; rather, they can be "full of . . . rage and frustration" brought on by repeated exposure to suffering that viewers feel they can do nothing about (*Regarding the Pain* 79-80). Hariman and Lucaites' suggestion that iconic images can help viewers deal with challenging events indicates another mode of looking that may not be apparent to an external observer. A viewer coming to terms with a violent event may look the same as a viewer watching a video for fun. While not iconic in all the ways that Hariman and Lucaites describe, the Hussein execution video is a public text, a civic performance recorded and then re-performed through its online circulation. Images like this one, including many that would be considered "graphic" in their representation of violence, have long served as access points for important events. It is reductive for authors to assume that personal perversion is the only or even the most common motivation for engaging with these images.

Perhaps most importantly, however, the focus on taste depoliticizes the choice to view the video and ignores the broader cultural frames that make this violence acceptable. All of this commentary suggests that Americans are watching this video because they want to see whatever violence is novel, rather than a specific violent act with which they were somewhat involved and which had been framed as newsworthy and important. This construction of audience motivation fits with the frame discussed in the previous section in that it erases the United States' involvement and assumes a detached, perverse audience with no legitimate reason to want or even feel obligated to see this

video. Certainly, some viewers watched Hussein's video with the intention of delighting in suffering. But even that distasteful response can be anchored in broader understandings of the purposes of state violence and the nature of "justice," which, as Chapter 2 suggests, can be connected to feelings of anger and revenge even in the most "civilized" contexts.

In this chapter, I have argued that the pro-violence rhetoric around the torture images from Abu Ghraib and the video of Saddam Hussein's execution manages interpretation by restricting the right to look. These arguments draw on common understandings of "appropriate" looking, as well as beliefs about specific audiences' relationships with images, to limit the images' impact. The arguments responding to the torture photographs from Abu Ghraib, as well as many of the arguments responding to the video of Hussein's execution, draw on asymmetrical understandings of culture and Orientalist beliefs about how "primitives" relate to images and objects. These arguments suggest that Middle Eastern Muslim audiences are so attached to their culture that any perceived offense, however slight, will provoke violence. Within this rhetoric, there is only one possible Middle Eastern Muslim response to the torture at Abu Ghraib and Saddam Hussein's execution, and it is detached from the actual violence and its political context. The problem, according to these arguments, is not the systemic application of violence, but the "uncivilized" audience that witnesses it.

Limits on American spectatorship project negative characteristics onto audience members in a similar way. The assumption that the American masses have only perverse reasons for watching Hussein's execution also draws on cultural stereotypes; specifically, the belief that the masses prefer exploitative entertainment and, if left to their own

devices, will seek out the goriest material available. These characterizations are implicitly classed, especially when viewed in the context of historical concerns about whether the suggestible working class can handle exposure to violence, and ignore the ways in which Americans were interpellated into involvement in the invasion of Iraq and Hussein's capture. These arguments, too, dismiss multiple larger issues to target the audience as the source of any post-violence discord. Within this rhetoric, the problem is not a culture of violence that assumes that killing someone is a democratic rite of passage, but an audience that loves to watch violence.

Like the rhetoric around lynching and the contemporary death penalty discussed in Chapters 1 and 3, the rhetoric around these images functions largely by reserving interpretive rights. "Correct" interpretation of this violence is a marker for membership in the ingroup. Saying that the torture at Abu Ghraib is not the "real America," or that Hussein's execution was a "missed opportunity" that is none of Americans' business, works much like saying that lynching was caused by rape or that the death penalty definitely deters crime. In all cases, there is evidence against those claims. Often, the evidence is widely known and hard to refute. But rhetors who make these claims label themselves as adherents to particular worldviews and separate themselves from the unsavory outgroups that believe something different.

In the context of these arguments, however, the restriction on interpretive rights is masked somewhat by understandings of appropriate viewing and beliefs about images more generally. Both sets of arguments also draw on an understanding of the image as problematically dualistic to reserve interpretive rights for their respective groups ("true" Americans and elite Americans). Because images are embedded in social situations, their

meaning determined by context and viewer as well as content, they contain a variety of unpredictable meanings. The simultaneous "over- and under-estimation" of the image is common: they mean everything, and nothing (Mitchell 76). These arguments make use of this potentially frustrating dualism by attaching the image's legibility and "correct" meaning to the interpreter. The right person can perceive both the image's values and its minimal significance. For example, the spectator might learn from an image that there was torture at Abu Ghraib, but that that torture is not important because it is not indicative of broader policies. The wrong person, within these arguments, will both misread and overvalue the image, understanding it as a personal assault or an object of intense desire. By working with these common beliefs about the qualities of images, these pro-violence arguments make use of what could be problematic visibility to reinforce distinctions between ingroups and outgroups.

The ways in which pro-violence rhetors mobilize these understandings of images has implications for scholars working on visual rhetorics of violence, particularly in considering how we describe "inappropriate looking" and its causes. Analyzing images of violence can be frustrating, particularly when there is a gap between what scholars believe an image can do and its actual effects (or lack thereof) on public opinion and policy. Scholars sometimes place the blame for that failure—the failure to make the audience understand, or sympathize, or take political action on the conditions that produced the violence—on the specific images, or on all images. Susan Sontag's work, for example, is often pessimistic about the image's ability to affect spectators in a way that will translate into meaningful political action, in part because the image itself is always an objectification, "turn[ing] an event or a person into something that can be

possessed" (*Regarding the Pain* 58). Judith Butler notes something similar in Joanna Bourke's description of the Abu Ghraib torture photographs as "pornographic." According to Butler, Bourke ultimately suggests that "the abuse is performed by the camera" because the argument emphasizes a pleasure in seeing instigated by the camera's presence (Butler 88). But just as the pro-violence arguments discussed above intertwine the image's assumed qualities and the audience's assumed reactions, some scholarship on images of violence implicitly blames viewers as well. Bourke's construction of the Abu Ghraib images as "pornographic" and exemplary of "our society's heart of darkness" suggests not just that the torturers were sexually deviant, but that many viewers might encounter them in a similar way. While Bourke does not suggest that this audience response is necessarily the result of individual deviance, she does suggest that the broader population is likely to have a response that she does not. Calling these images "pornographic" also extends deviance to the large portion of the population that consumes pornography, even though much of that pornography is non-violent, unambiguously legal, and features consenting adults.

In critiquing Bourke's argument, I do not mean to suggest that there is not something wrong with American relationships to violence. Much of this dissertation has suggested that communities at the local and national scale are constituted in part by troubling relationships to and understandings of violence. But the binary division of viewing practices, in which the scholar understands images of violence and the less-educated majority consumes them joyfully, is reductive. This frame reinforces the divisions between appropriate and inappropriate audiences that both regulates visibility of violent images and obscures more nuanced responses. Additionally, while arguments like

Bourke's emphasize certain forms of cultural violence (for example, the glorification of war), they obscure the other, less obvious frames that establish standards for appropriate violence and appropriate victims.

Judith Butler suggests that images of violence are often upsetting for what they show scholars about ourselves and the society to which we belong: that we have social frames in place that render horrifying behavior acceptable and certain targets inhuman. She suggests that scholars like Sontag are frustrated in part because they can see frames that preceded the images and that will precipitate more violence, but feel helpless to overcome them (Butler 99-100)**.** This chapter suggests that, by looking at how we respond to these images in scholarship, we can see some of the problematic frames put in place by these very anxieties and assumptions about what images can or should do. Anti-violence concerns about how to construct the right frames to encourage witnessing can obscure subtle denials of "the right to look." By trying to think around or outside of these binaries of witnessing and spectatorship, and addressing how these images are constructed in various circumstances, we can begin to understand more about what engagement with violence looks like and the role visibility can play in anti-violence work.

~Conclusion~

The preceding chapters have addressed three violent spectacles that reinforce shared norms about spectatorship, justice, and the uses of violence. While the physical constructions of these violent practices differ, the written and spoken arguments that support them function in basically the same way: by positing only one correct reaction to the spectacle and projecting "wrong" reactions onto malicious and uncivilized outgroups. These rhetorical acts of violence and their supporting rhetoric often contain problematic arguments. There can be contradictions between the supposed communicative goals of an act of violence and the construction of the event itself, like when retentionist rhetors claims that the death penalty is supposed to deter crime, a task for which modern execution is ill-suited. There can be contradictions within the rhetoric that supports a violent practice, like when pro-lynching rhetors threaten to lynch someone who says that lynching is not a response to rape. Sometimes pro-violence rhetors make openly counterfactual statements, like insisting that a form of violence punishes crime or is not representative of approved practices. These seeming flaws, however, work in favor of these violent spectacles because the spectacles are not tools of crime control, but sites of identification. These rhetorical acts of violence and their supporting rhetoric delineate the borders between groups based not just on who "deserves" violence, but on who can understand or access it. The result is a self-reinforcing system of epistemic injustice in which outgroups are denied the right to argue about or interpret violence, while the understanding of violence becomes a central marker for "civilized," "reasonable" people.

The debates over these violent practices are intractable in part because the

violence's value is constructed as self-evident for all "true" community members. When support of or participation in an act of violence is a part of a broader worldview, there is no reason to listen to the other side because anyone who disagrees must be an outsider. Additionally, the narratives surrounding these violent practices can be so prominent that even activists and scholars overlook the violence's disavowed meanings, thereby inhibiting the development of alternative perspectives. By accepting a division between appropriate and inappropriate violence based largely on how the violence is staged and how the audience reacts, rhetors can unwittingly support the group divisions and standards of decorum that perpetuate violence. Additionally, uncritically drawing lines between appropriate and inappropriate looking can reproduce reductive points of view about violence, its functions, and its audiences, making us less able to address the broader norms that structure these practices.

In Chapter 1, I argue that pro-lynching rhetoric reinforces lynching's implied standards for public debate in its insistence that white Southerners have a shared knowledge that outsiders lack and anyone who questions that shared knowledge does so because of prejudice toward the South. Pro-lynching rhetors' repeated insistence on the rape justification in spite of its evident untruth forms a community around an interpretation of violence, one that heavily values the performances of respect that characterize Southern honor culture. I ultimately suggest that the rhetorical refusals embedded in pro-lynching rhetoric are so persistently tied to Southern identity that anti-lynching arguments that attempt to dissociate lynching and Southernness are bound to fail. Opinions about lynching are deeply connected to identity; if a speaker has the "wrong" opinion, he or she has the "wrong" identity, and vice versa.

In Chapter 2, I discuss how violent spectacle functions differently when the visual text of violence is largely hidden from the public. I argue that execution procedure and retentionist rhetoric deemphasize citizen involvement with the execution itself, typically by suggesting that the live text of execution contains no relevant information for viewers. In place of visual data, retentionist rhetoric suggests that citizens should draw on normalized feelings of anger and desire for revenge to make decisions about the death penalty. This epistemology conflicts with the common retentionist claim that execution is not supposed to be emotional or personal, but it also shields the death penalty from a great deal of critique by suggesting that its effectiveness is a matter of common sense and its retention is a victory for democracy. Abolitionist arguments about the death penalty's ineffectiveness as a social policy thus encounter considerable hurdles because pro-death penalty rhetoric relies more heavily on a shared worldview than on external evidence.

In Chapter 3, I discuss how rhetors control interpretation of illicit images of public violence. While the circulation of these images can cause problems for pro-violence rhetors, I argue that beliefs about decorum and appropriate viewing make it possible for the images to reinforce, rather than disrupt, existing frames of inequality and difference. Here, too, interpretation of violence delineates ingroups and outgroups. Rhetors construct undesirable interpretations of the images as a result of an outgroup's personal flaws, rather than one of many legitimate responses. According to these arguments, members of the outgroup bring perversions, ignorance, and prejudice to their engagement with the images, and therefore their interpretations cannot be trusted. This rhetoric of good and bad looking should be familiar to scholars working on images of violence because we often fall into similar binaries, sometimes even with a demophobic focus on the people

who are supposedly misinterpreting the image.

In all of these cases, constructions of appropriate violence and misunderstanding or deviant spectators reinforces existing structures of power. These violent spectacles are all constructed as relatively easy solutions to complicated, systemic problems: crime and terrorism. Their supporting rhetoric further simplifies the conversation by insisting that these spectacles work, in spite of evidence to the contrary. The structure of these spectacles and their surrounding rhetoric, then, allows communities to ignore structures of inequality that perpetuate violence while still behaving as if (and perhaps believing that) they are addressing the problem. These structures of violence benefit people for whom systemic approaches to crime prevention would be disruptive—for example, individuals who benefit from cheap labor and high unemployment, or who profit from the United States' prison system. These forms of violent spectacle also benefit individuals and groups who can draw on the identifications that the violence constructs. As I noted in Chapter 2, support for the death penalty can mark a gendered and racialized "tough on crime" identity. The "right" relationship with the violent spectacle becomes a simplified code for ingroup membership, and that code can contain, as well as obscure, underlying prejudices that support existing forms of race and class privilege.

Examining these violent practices together as public discourse clarifies their specific functions and the overlapping features of their surrounding rhetoric, but there is still a great deal that this dissertation does not address. In particular, this dissertation raises questions about understandings of justice, legal codifications of pain, and visual and multimodal rhetorics of violence that I have not had room to fully discuss. The remainder of this conclusion will begin to explore these areas of inquiry, both to further

tie together the main threads of the dissertation and to suggest additional paths for research.

Letting God Sort 'Em Out: The Dismissal of Accuracy's Implications for Activist Rhetoric

I have suggested throughout this dissertation that lynching, the death penalty, and torture persist in spite of failing to do much of what they are purportedly supposed to do: prevent future violence, provide closure for victims, or produce actionable intelligence. To perceive these violent practices as failures, however, is to ignore their more important rhetorical functions. While these forms of violence may not be successful at their avowed objectives, they are excellent at reinforcing the divisions between ingroups and outgroups and reinforcing beliefs about justice and the uses of violence. But the construction of these practices as utilitarian can often impede anti-violence rhetoric. While Chapter 2 contains a brief discussion of the problematic assumptions abolitionist rhetors sometimes make about the "right" way for citizens to relate to the death penalty, I have not fully discussed the impact that this violence's rhetorical construction can have on anti-violence rhetoric. In this section, I will examine in more detail how the constructions of criminality and "justice" associated with torture and the death penalty can cause problems for prominent anti-violence arguments. These problems raise questions about the best way for anti-violence activists to approach these issues, and while activist rhetoric does not feature prominently in this dissertation, its objectives motivate much of the analysis.

Many arguments against the death penalty and torture focus on the procedural issues associated with each: specifically, that innocent people have been and always will

be executed, and that torture is not an effective means of gathering information. These arguments seem promising in that they ostensibly operate from (or at least avoid rejecting) premises that pro-violence audiences might have, in large part because they do not require audiences to sympathize with victims. These arguments allow audiences to hold on to some of their key beliefs. For example, pro-death penalty audiences can believe that most criminals are monsters and still be concerned about the innocent death row inmates, and pro-torture audiences can believe that detainees have information about terrorist plots, but that torture is not the best way to extract it. By detaching violence from its moral stakes and ostensibly skirting the problem of identification with accused criminals, these arguments seem as if they would persuade audiences in favor of these policies to, however begrudgingly, admit that they are a waste of time and money. While these arguments are designed not to require a great deal of sympathy, however, they may still ask for too much. Like torture, the death penalty is connected to a racialized understanding of inherent criminality that limits the effectiveness of arguments about "actual innocence." Like the death penalty, torture is supported largely by "common sense" understandings of how criminals respond to violence. By viewing the two of these together, we can see how these constructions inhibit what would otherwise seem to be effective anti-violence arguments.

In Chapter 2, I noted that innocence-related arguments can encounter issues because even "actual innocents," individuals who did not commit the crime for which they were convicted, are not always sympathetic. While some of this difficulty is particular to the individual inmate, it likely also stems from a perceived disconnect between criminals/inmates and "regular people." This disconnect did not always exist;

colonists and early Americans were more likely to believe that all humans were on the constant precipice of sin, so there was no criminal "type," although people still judged the condemned for his or her perceived weakness (Banner 21). But contemporary death penalty support is connected with the often-racialized belief that criminality is inherent, and thus death penalty supporters may be more likely to perceive themselves as fundamentally different from criminals (Peffley and Hurwitz 1003) This frame creates simplicity for its adherent: bad people are bad, and we can always tell who they are. If an "actual innocent" still fits the archetype for criminality in audience members' minds, then they may assume that, even if the condemned is not guilty of the crime of which he is accused, he has likely done something and thus still merits execution. In an interview with NPR, Jennifer Thompson, who incorrectly identified her rapist in 1984, explains that this was a common reaction to her revelation that she had made a mistake. She explains, "You know, I had asked people, you know, what should I do, and people, you know, would kind of look at you and say, you know, he probably did something he never got caught for, you know, he's probably a bad guy" ("Life After Exoneration"). Even Thompson, who eventually came forward, notes that she was able to "assuage [her] guilt" temporarily by accepting that characterization ("Life After Exoneration").

A belief in inherent criminality makes the accuracy of punishment a secondary concern. As was the case with lynching, the "details" of the death penalty may be of less concern to its supporters than anti-death penalty activists assume. Lynchers were blatantly unconcerned about lynching the correct "perpetrator," because lynching any black person would send the same message of white supremacy, and randomness was part of the point. While it seems like getting the wrong person would make a

contemporary authorizing organization look incompetent, beliefs about inherent criminality help the death penalty maintain acceptability. When these beliefs are connected to race, then "getting it wrong," again, can be part of the point of the death penalty as perceived by audiences. As Peffley and Hurwitz note, "many whites actually become more supportive of the death penalty upon learning that it discriminates against blacks" (1006). If audiences believe that African Americans are more likely to be inherently and thus irredeemably criminal, then that discrimination is evidence of effectiveness rather than a problem. The broad characterization of irrational, violent Muslims discussed in Chapter 3 allows for a similar dismissal of error. If audiences believe that Muslims are fanatically devoted to a violent culture, then they can assume that most detainees are, if not already involved in a terrorist plot, likely to become involved sooner or later. This logic fits torture's forward-looking goals especially well. According to dominant narratives of torture, the torture victim does not have to have done anything at the time of the torture; ideally, he or she will have been planning something that torture will then prevent. A belief that all Muslims are fanatical and violent will assure audiences that torture is probably justified, and that it is better to be safe than sorry.

A laissez-faire attitude about punishing the innocent is somewhat connected to faith in the criminal justice or military system. Individuals might assume that the police or military personnel have done their jobs, and that well-intentioned adherence to procedure is enough to eliminate error. The multi-step capital process makes this assumption relatively easy, since individuals know that there are safeguards in place to prevent the execution of innocents. But this attitude also suggests a vision of retributive

justice detached from governmental structures and nearly all forms of accountability. Some rhetors argue that executing the innocent is a problem in part because doing so puts the retributive moral scales out of balance, but this understanding of criminality suggests that audiences may not perceive it that way (Steiker and Steiker 597). If individuals can reliably know who is bad, and it is acceptable to hurt someone even if that person is not guilty of the crime for which they are being punished, then "justice" is extremely amorphous. This perspective is a more extreme version of what Lakoff describes. Rather than a crime disrupting moral balance and obligating citizens to punish, a person's assumed inherent qualities balance out any violence aimed at him or her. With such loose criteria for acceptable violence, it is unsurprising that arguments about innocence have not made more of an impact. For a punishment to truly be in error, it would have to target an easily recognizable "normal" person whose opinions about justice and violence align with those of the ingroup.

It is important to note, too, that other "mistakes" can function as a part of the violent spectacle's argument. In addition to the embrace of racial bias noted above, there is also a positive rhetoric surrounding "botched" executions. As I noted in Chapter 2, prison personnel and state authorities often embraced the occasional foray into "cruel and unusual punishment" by referring to electric chairs by macabre nicknames, like "Old Sparky" and "Gruesome Gertie." These nicknames suggest that the chairs are poorly constructed and subject to malfunction, but that these "flaws" are part of their appeal. Florida State Attorney General Bob Butterworth made this argument openly after Pedro Medina caught fire in the electric chair in 1997. He warned, "People who wish to commit murder, they better not do it in the State of Florida, because we may have a problem with

our electric chair" (Kennedy). Using Medina's botched execution as a threat puts forth a tough-on-crime ethos that goes beyond what the law permits but in a fashion that also deflects responsibility in a winking way. Obviously, state authorities have the capacity to repair any problems with the electric chair, but Butterworth's comment suggests that they choose not to. In this way, Butterworth's embrace of error hearkens back to lynching's deliberate excess. His argument suggests that the state of Florida hates crime and criminals so much that they will make only a minimal attempt at "humane" punishment.

Innocence-related arguments can function this way as well. At the beginning of Chapter 2, I noted that the audience at the September 7th, 2011 Republican presidential debate cheered for Rick Perry's execution record, in spite of likely knowledge that he may have presided over the execution of an innocent man. Far from haunting him, the execution of Cameron Todd Willingham seemed to increase Perry's credibility with some voters. In 2010, campaign workers for Senator Kay Bailey Hutchison "ask[ed] a focus group about the charge that Perry may have presided over the execution of an innocent man . . . and got this response from a primary voter: 'It takes balls to execute an innocent man'" (Burns and Haberman). This response suggests that Perry's refusal to pardon Willingham enhances his masculine, tough-on-crime ethos. The implication is that all inmates are "bad" in some way, so listening to even justified appeals is coddling them, and that it is better to, as the saying goes, kill 'em all, and let God sort 'em out.

Torture's ineffectiveness can function in the same way. If audiences believe that terrorists are "*fundamentally* violent" and that "regular people" are unlikely to be in the sort of circumstances in which they might be suspected of terrorism, then it may not matter to them whether the correct person is tortured (Vicaro 416; emphasis original). For

some audiences, the violent assertion of American superiority through torture does not even need to be a means of gathering intelligence, as Rush Limbaugh's notorious claim that the torturers at Abu Ghraib were just trying to "blow some steam off" indicates (qtd. in Seifter and Wildau). If audiences feel that torture victims are less than human and/or inherently evil, then, like lynching defenders, they may assume that violence is the default, and that anything else is merciful.

It is also clear, however, that belief in torture is grounded in "common sense" understandings of criminal behavior, similar to those that ground a belief in the death penalty's deterrent effect. Like the beliefs about criminal behavior discussed in Chapter 2, these understandings of criminality are contradictory, constructing the terrorist as both entirely committed to his violent project and persuadable through violence. In some ways, torture fits with the two-dimensional characterization of the terrorist. A historical premise of torture, as Paige DuBois explains, is that certain people can only be persuaded through their bodies because they have no internal life (52; 65-66). Applying pain to their bodies will produce truth because the essence of the tortured is his body, and when that essence is under attack, the victim will be unable to lie (68). This understanding corresponds to the concept of the terrorist as animalistic, singularly controlled by his mission. But this animating desire also complicates the formula. The dehumanizing of the terrorist, in which he is just a mission with no personal thoughts or feelings, also diminishes his body, suggesting that he may experience pain differently because he is so devoted to his terrorist objectives. Because the terrorist is constructed as both animalistic and single-mindedly devoted, the othering logic that perpetuates torture only makes sense if the terrorist is a flexible abstraction, constructed on the fly to deserve whatever

violence is currently being applied.

Torture also draws on the common claim, implicit in death penalty rhetoric as well, that violence is the ultimate form of persuasion. To believe that torture is justifiable as a last resort, as in the "ticking time bomb" scenario, audiences have to believe that nothing will be more persuasive than subjecting someone to intense pain. The truth, of course, is more complicated. A Senate probe ultimately found that "enhanced interrogation techniques" were not effective in producing actionable intelligence (Hosenball). Suspects enduring stealth or scarring torture are also likely to lie, as retired Air Force Colonel and former interrogator John Rothrock points out, explaining, "if I take a Bunsen burner to the guy's genitals, he's going to tell you just about anything" (qtd. in Applebaum). The final recourse to violence, however, can *feel* right, as if violence *must* do something. If rhetoric and violence produce the same effects, then the substitution can work in either direction: rhetoric for violence, but also violence for rhetoric. The assumption that intractable problems can be solved with violence is common, and it can be used as a way to justify torture and reject arguments that torture is ineffective.

Anti-violence arguments that emphasize torture's ineffectiveness or the possibility of executing an innocent person can thus conflict with, but not necessarily debunk or transform, the beliefs that animate support of the death penalty and torture. Arguments that attempt to account for these beliefs, however, can develop the same problem illustrated by Wagner's anti-lynching speech in Chapter 1. Not only is avoiding asking for sympathy not enough, but it can also ignore the structures of difference that inhibit sympathy on a larger scale, affecting not just death row inmates or torture victims, but all people perceived as "criminal." A more thorough investigation of this issue would

require more detailed information about public perception of criminality, including unconscious associations, and a detailed examination of anti-death penalty and/or anti-torture arguments. Of particular interest would be projects that attempt to humanize inmates or detainees for a wider audience: for example, more straightforward efforts, like *Poems from Guantánamo: The Detainees Speak*, as well as projects with a less-clear message, like Henry Hargreaves' *No Seconds*, in which the artist reconstructs in photographs the last meals of executed inmates. Putting these forms of argument into dialogue with more straightforward anti-violence arguments could suggest means of anticipating and destabilizing the underlying beliefs that facilitate violence while still speaking and acting emphatically against specific practices.

Law, Intent, and Quantifying Pain

In the introduction to this dissertation, I discuss the difficulty of processing another person's pain based on dominant understandings of what makes pain legible. The death penalty and stealth torture are both constructed to seem painless based on these understandings. Both forms of violence can be painful—for torture, that is a requirement—but they are constructed as more humane in part because they leave the body intact, without any visible wounds. Considering how pain operates and is obscured in these violent practices raises questions about violence's assumed functions and controllability. These arguments are especially visible in conversations about torture. Because "enhanced interrogation" is supposed to be painful, but not so painful that it violates anti-torture statutes, rhetors defending its use must constantly delineate the borders between "interrogation" and "torture." A more thorough engagement with the

rhetoric that constructs these borders could enhance our understanding of how rhetors define appropriate and inappropriate violence. Analysis of these claims could also help illuminate the epistemological barriers that pro-violence rhetoric often erects to limit criticism of violent practices. While the dissertation has addressed these barriers to some degree, torture receives the least attention, and pro-torture philosophies of quantifiable pain are a good starting point for addressing how pain is constructed in legal discourse.

The US federal anti-torture statute differs from the United Nations Convention Against Torture (UNCAT). The UNCAT definition of torture was controversial, and the US agreed to ratify it only if US officials would be bound "to enforce the prohibition on torture only in accordance with their newly written, atypical federal definition" (Vicaro 407). Article 1.1 of the UNCAT defines torture as follows:

> Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. ("Convention Against Torture")

As Michael Vicaro explains, the United States had problems with this "horizontal" definition, in which "torture and the lesser offense of Cruel, Inhumane, Degrading Treatment (CIDT) are both extremely aggravated forms of abuse and [are] distinguished

not by *severity* but by *purpose*" (406). The US federal statute, written in opposition to the UNCAT definition, emphasizes severity. It defines torture as "an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control" ("18 USC § 2340—Definitions").

This definition of torture relies on a problematic understanding of how pain works. Within this definition, pain is quantifiable, a measurable state that a torturer can induce in a victim in gradually increasing intervals to produce the desired results. As we have seen, however, pain does not work this way. Vicaro notes that the idea of pain as something one "has" is in itself problematic. He explains, "pain is not some measurable 'thing' but part of the field of its victim's very being" (411). If pain is more than a physical state, then quantifying suffering becomes challenging. Additionally, it is unlikely that "interrogators" will know, even with specific instructions, how to apply *just* enough pain so that they do not become "torturers." As John Schiemann explains, the conditions of torture are marked by uncertainty. The torturer needs to know that the victim knows something and, perhaps most importantly, that the victim has given up all that he or she knows. The impossibility of confirming a "complete" interrogation, along with the baseline approval for violence, is likely to encourage escalation (Schiemann 15). By constructing pain as a tool and the body of the victim as a machine, the statute encourages experimentation, poking around in the hopes of getting better, faster results. The statute, however, assumes a controllability and reliability that violence as a persuasive text does not have.

The impossibility of the precise application of violence also makes it more

challenging to prove that a torturer *intended* to inflict severe pain instead of acceptable pain. Intent is part of the US torture statute, but only in relation to severity. Torture is defined as "specifically intended to inflict severe physical or mental pain or suffering," a definition that makes use of the epistemological gap between a person in pain and her observer ("18 USC § 2340—Definitions"). It is possible that, when a torture victim is already dehumanized, a torturer could ignore signs of severe pain and assume that his or her actions are fine. The torturer would also need to know the line between acceptable and unacceptable practices, which, as the statute's vagueness indicates, could be challenging. Particularly in the case of stealth torture, when there are no visible wounds, the torturer becomes the authority on whether the pain was intentionally severe.

A torturer who claims that the escalation was accidental could be charged with a lesser offense. It would also be easy for a torturer to claim that there was no escalation and that the victim is exaggerating. This epistemology of pain, then, is obviously self-serving, enabling plausible deniability should torturers go "too far" in their interrogations.

In a way, this epistemology mirrors the claim that no one should critique violent practices without fully understanding the internal "essence" of the perpetrators. Both pro-lynching rhetoric and the Bush Administration's responses to Abu Ghraib suggest that outsiders cannot possibly criticize these respective acts of violence because they do not, as Bush put it, know the "true . . . heart" of the authorizing community ("President Bush, Jordanian King"). In both cases, rhetors suggest that what is visible does not provide accurate information for judgment. While it appears that the South is not a racial utopia and that lynching is a serious problem, Southern Democrats insist that everything is going fine and that someone from outside the South has no authority to make an opposing

judgment. Bush and Rumsfeld both insist that the United States is being judged unfairly by people who do not know the "real" America, the essence of which is apparently separate from the United States' policies and actions. This persistent thread that insists that outsiders cannot make judgments based on what they see also has implications for these understandings of torture. These claims destabilize what little evidence might be available of a torture victims' pain. When authority is so connected to identity, itself connected to understandings of appropriate violence, then it is especially hard to suggest readings outside of the self-serving pro-torture readings that stealth torture's obscurity encourages.

While structured somewhat differently, understandings of "cruel and unusual" punishment are similarly tied to intent. As I discussed in Chapter 2, "inhumane" punishment is typically what looks inhumane or is associated with extralegal or otherwise "uncivilized" activities. Additionally, within the limited capital jurisprudence on methods of execution, unconstitutionally "cruel" punishments must be intentionally cruel; that is, cruel when applied correctly and designed to cause excess pain (M. Mills 241-242). Mills points out that in *In re. Kemmler*, the case in which the United States Supreme Court was asked to rule on whether electrocution constituted cruel and unusual punishment, "the Court spent considerable time discussing the origins of New York's method-of-execution statute, pointing out that it had been enacted to provide a more humane, less barbarous means of execution than hanging" (M. Mills 241; citation omitted). This frame, like that of the US statute on torture, assumes that pain is knowable and controllable and constructs the person (or, in this case, group) inflicting the pain, rather than the person experiencing it, as the key source of information about whether the pain inflicted is

within legal limits. This emphasis on intent fits with the death penalty concept of "evolving standards of decency," which allows for the possibility that communities might eventually come to understand certain forms of violence as inappropriately painful. In privileging consensus, this standard suggests that communities can make decisions about the violence they wield with the knowledge that they can always be disavowed later.

Thinking about how law codifies pain in these two forms of violence raises additional questions about how communities think of themselves in relation to violence and how direct violence is constructed as both like and unlike social policies of systemic violence. What kind of activities do these understandings of pain enable, and where might we see alternative models? We might also consider the increasing medicalization of the death penalty and torture, including the occasional use of scientific methods to determine pain. One such example occurred in North Carolina, where officials overseeing the execution by lethal injection of Willie Brown monitored his brain waves in hopes of proving that lethal injection is not painful (Jacobs). Considering how these interventions fit into or modify existing epistemologies of pain could clarify the construction of pain in contemporary execution procedure, particularly in relation to the ocular epistemology that typically structures judgments of humaneness.

Looking at Violence, or, What Do We Want From Pictures?

Many of the arguments discussed in this dissertation cast aspersions on visibility in general. Because visible violence is harder to control and looking at violence is tied up with understandings of taste and class, both pro- and anti-violence rhetors are often wary of making violence visible. Additionally, as I noted in Chapter 3, images carry the

baggage of their flexible meanings. Because images can mean both everything and nothing, they are often constructed as suspicious, and the desire to view them as potentially misguided or tasteless**.** I have tried to show that these assumptions, while not unfounded, can be problematic because they obscure and perpetuate violence. I have not discussed, however, how images of violence can serve positive functions, and how we as scholars could address their complex circulation in a more nuanced way. In this section, I will pose some of those questions in relation to *Without Sanctuary: Lynching Photography in America*, a text that, while mentioned, does not feature prominently in this dissertation. Positive and negative reviews of *Without Sanctuary* make claims about what role these images of past violence should play in contemporary life and the nature and limits of their persuasive power. Asking what scholars want from these images shifts the focus away from pro-violence rhetorics of visual control to in order to extend the brief engagement with scholarly understandings of violent images in Chapter 3.

James Allen, an Atlanta antiques dealer, began his collection of lynching photographs when he unexpectedly encountered a photograph of the 1915 lynching of Leo Frank (Pogrebin). Allen went on to accumulate "more than one hundred thirty lynching photographs, paying as much as $30,000 for a panel of three photos" (Apel, "On Looking," 459). More than sixty of these photographs were displayed for the first time as *Witness* in Manhattan's Roth Horowitz Gallery in 2000, shortly before the book version of *Without Sanctuary* was published, and the collection went on to be exhibited at the New York Historical Society, Pittsburgh's Andy Warhol Museum, and Atlanta's Martin Luther King Jr. National Historical Site, among others (Apel, "On Looking," 457).

Reviews of the exhibits, usually focused on one of the two New York exhibitions,

typically suggest that the photographs are valuable because they remind viewers of an often-obscured time in American history, many of the underlying values of which are still present. W.J.T. Mitchell, initially horrified by the idea of the exhibit, ultimately evinces this standpoint. Before seeing the exhibit, Mitchell wrote, "I find it disturbing . . . that a New York art gallery would display early twentieth-century American photographs of lynching. What purpose, I want to know, is being served by putting these terrible, harrowing images of evil on display for the voyeuristic gratification of the gallery-going public?" (142; note omitted). A footnote on that statement, added to the book after Mitchell saw *Without Sanctuary* at the New York Historical Society, revises his claim: "I'm fully convinced that [the photographs'] presentation is anything but exploitative or voyeuristic . . . I find nothing to offend, but find a great deal to mortify, astonish, and shame anyone who thinks America's race problem is behind us" (142, note 36). Natasha Barnes takes a similar stance, arguing that the exhibits of *Without Sanctuary* "act as guerrilla performances in the gentile traditions that romanticize the Southern past" (90). As Ohl and Potter note, lynching's place in American public memory has historically been limited and plagued with inaccurate accounts that construct lynchings as the actions of "out of control" fringe groups (188-190). These arguments, then, suggest that the photographs in *Without Sanctuary* perform a necessary informative function, debunking prior understandings of lynching and clarifying its horror in the audiences' minds.

Years after the initial exhibit and publication of *Without Sanctuary*, commentators highlight the images' potential to help viewers understand the images of torture from Abu Ghraib. Dora Apel, who has written extensively about lynching photographs, emphasizes that both sets of photographs are examples of a "torture culture" in which perpetrators see

violence as both a political act and a source of personal pleasure. Apel explains,

> The pleasure in the extreme pain and degradation of others relies on a process of dehumanization that depends in large part on constructing Arabs and Muslims as an undifferentiated mass, just as black men were stereotyped en masse by white supremacists . . . making them far easier to humiliate, torture, sexually exploit, and kill. ("Torture Culture" 93)

While Apel refers to the Abu Ghraib photographs as "pornographic," she emphasizes that the pleasure in the photographs comes from "[t]he trend in American culture which holds Arabs and Muslims in contempt, just as 'blackness' was help in contempt" rather than from the pornography industry ("Torture Culture" 93). In treating these two sets of photographs together, Apel builds on a preexisting theme in the conversation about Abu Ghraib and reinforces its underlying assumption: that lynching photographs show Americans that Abu Ghraib is not shocking, and that historical distance may make an American "torture culture" more visible in lynching photographs than it is in the images from Abu Ghraib.

Apel's treatment, as well as many of the initial responses to the exhibit and the book, assume that these photographs are useful in large part because they teach white Americans something about who they are. While some pieces address the possibility for healing through the photographs, many commentators, like Apel, state that "the proud perpetrators," who often posed with the corpses of lynching victims, are "more shocking" than the corpses themselves ("Torture Culture" 89). While this function has its limits, as discussed below, it is also important. The perpetrators in these pictures are constructed as a problem for contemporary Americans to solve: why would people do this? And while

this answer is sometimes simplified to a version of "this is just how people are," it has also led to investigations of lynching's rhetorical structure, including the one undertaken in Chapter 1.

This entreaty to look, however, does raise other concerns. Wendy Wolters argues that this entreaty to look at and identify with the spectators in these lynching photographs can leave intact problematic frames around the "right to look." Wolters' analysis focuses on how Allen frames the photographs in the book version of *Without Sanctuary,* but the tropes she targets are common in rhetoric around the exhibits as well. Wolters contests the claim that modern spectators "are . . . better equipped to look *at* instead of *with* the spectators," noting that even the well-intentioned viewing of *Without Sanctuary* reproduces unequal visual dynamics (399). In asking viewers to look at the spectators, featured prominently in some images, but absent in others, Allen obscures the whiteness that is the lens of all the images (410). Whiteness is a key condition of possibility for these images; without a white spectator, if only the one who took the picture, these displays of white supremacy would not exist. Wolters argues that the failure to acknowledge these broader structuring frames, in which black bodies are there to be seen and whiteness is invisible, both reproduce racialized structures of visibility and leave black spectators adrift, effectively erasing them as viewers by forcing them to adopt whiteness or identify with the victims (419-421).

Wolters, then, sees these images much as I have suggested that we should see violent spectacle within this text: as a site of arguments, not just about what sort of violence is appropriate and who belongs in an outgroup but, equally important, meta-arguments about when and how to look, how to encounter the text of violence, that

reinforce ingroup/outgroup divisions. While much of the commentary about *Without Sanctuary* references the difficulty of looking at these images, few note the specific complexities associated with the longstanding construction of blacks as objects for the white gaze. Without appropriate framing, this seemingly obvious feature of these images can get lost, ironically obscured by viewers attempting to sort out their relationship to these horrors.

I point out these threads in the conversation about *Without Sanctuary* not to suggest that these images should not be on display, but rather that they can teach us more than we may notice, and that other images could be approached in a similar way. Scholarship on visual rhetorics of violence can be very focused on image, context, and reaction, and less focused on subtle assumptions about visibility that also exist outside of the images' immediate context. In this way, the already-thorough scholarly conversation on visual rhetorics of violence might push somewhat further, to think of what structures of visibility these images expose, as well as the limits to what they can communicate in present contexts (and the limits of "visibility" as a concept). Recognizing these limits can allow us to incorporate more nuance into our discussions of looking at images of violence and begin to imagine other ways to productively engage with its memory and legacy.

It is appropriate to end with *Without Sanctuary* and thoughts of engaging with violence in new ways because that is approximately where this project began. It actually began with a different violent text: the cell phone video of Saddam Hussein's execution, discussed in Chapter 3. Two years after Hussein's death, it surprised me to learn that it was easy to find not only the original video, but edited versions that YouTube users had

made and posted. These versions stopped and started the execution, sometimes repeating the moment of the hanging; some included voiceover or added subtitles; some added footage to tell a longer story about Hussein. The impulse that these edits represent is not new, obviously. People have been interacting with images of violence, marking and circulating photographs, recreating them, and, when possible, editing or juxtaposing them to tell a particular story. The video's widespread digital availability, however, made it easy for viewers to modify the video in ways that were unavailable to earlier viewers of images of violence. The video's flexibility draws attention to both old and new methods of interacting with images of violence. The edits of this video raise questions about what it means to see something and say something, to "interact" with an image of violence. These interactions, like many discussed in this dissertation, do not fit into binary understandings of how people interact with violence.

In addition to describing the rhetoric of and around three forms of violence spectacle, this dissertation begins the work of talking about these complicated audience/violence relationships and how they are mediated by technology. This dissertation describes how pro-violence rhetoric constructs relationships between audiences and violence, but further investigation is necessary to understand the many available forms of interaction. Some of these forms are digital—for example, in addition to the much-talked about exhibits and book of *Without Sanctuary*, there is a website that contains most of the images from the book, but with different (and more minimal) supplementary material. Others, like the Moore's Ford Bridge lynching reenactment, are analog. This performance serves as an annual memorial and call for justice for a 1946 lynching of four African Americans in Monroe, Georgia (Davis). While constructed in

different media and for different purposes, both the *Without Sanctuary* website and the Moore's Ford Bridge lynching reenactment expand our understandings of what it means to interact with violence, and what form a "call for justice" can take. Research on these texts and others like them would continue this dissertation's task of expanding our understanding of the functions and rhetoric of violence.

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